

ORIGINAL

CONFIDENTIAL
THIS COPY TO BE RETURNED FOR FILES
OF S.C. ELECTRIC & GAS COMPANY

2017-143-E

EXECUTION VERSION

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO
THE FEDERAL ARBITRATION ACT, 9 U.S.C. §§ 1, ET SEQ., OR
ALTERNATIVELY THE SOUTH CAROLINA UNIFORM ARBITRATION
ACT, S.C. CODE §§ 15-48-10, ET SEQ.

POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT ("Agreement") is made and entered into this 18th day of April, 2017 (the "Effective Date"), by and between South Carolina Electric & Gas Company ("SCE&G" or "Buyer"), a corporation organized and existing under the laws of the State of South Carolina, and Shaw Creek Solar, LLC ("Seller"), a Delaware limited liability company. Seller and Buyer each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Seller intends, at its sole cost and expense, to design, construct, and operate a solar photovoltaic electric generating facility (the "Facility"), with a nameplate Facility Rating of 74.9 MW-AC ("Nameplate Capacity"), and anticipated first year net generation of 186,500 megawatt-hours (MWh) at the Delivery Point, located in Aiken County, South Carolina, as described in more detail in Attachment A; and

WHEREAS, Buyer is willing to purchase and Seller is willing to sell all of the Net Energy of the Facility (which may include the related RECs and other Environmental Attributes (defined below)) subject to the terms and conditions and at the prices set forth in this Agreement; and

WHEREAS, Seller has entered into, or will enter into, the separate and necessary agreements for generator interconnection and for transmission service, as required, pursuant to which Seller assumes contractual responsibility for making any and all transmission-related arrangements, including ancillary services as described in such agreements, between Seller and SCE&G Transmission for delivery of the Facility's Net Energy to Buyer; and

WHEREAS, subject to and in a manner consistent with the terms and conditions of this Agreement, the Facility is, or will be, capable of delivering Net Energy to Buyer for the Term of this Agreement. As agreed upon by the Parties, the Facility is, or will be, capable of delivering RECs and other related Environmental Attributes to Buyer for the Term of this Agreement.

NOW THEREFORE, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

All references to Articles and Sections are to those set forth in this Agreement. Reference to any document means such document as amended from time to time and reference to either Party includes any permitted successor or assignee thereof. The following definitions and any terms otherwise defined in this Agreement shall apply for all purposes of this Agreement and all notices and communications made pursuant to this Agreement.

"AAA" shall have the meaning provided in Section 14.3(a) hereof.

"Additional Equipment" shall have the meaning provided in Section 4.3(b) hereof.

"Additional Qualifying Nameplate Capacity" shall have the meaning provided in Section 4.3(b) hereof.

"Administrator" means a state or federal administrator, voluntary program standard-setting body, Certification Authority, if applicable, and any Government Agency or other body with jurisdiction over the Certification or the transfer or transferability of RECs in, any particular Applicable Program.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, such Person.

"Agreement" means this contract, including all Attachments, for the purchase of Net Energy (which may include all RECs and other related Environmental Attributes, as applicable) entered into between Seller and Buyer and as may be amended or modified by the Parties from time to time.

"Alternative Agreement" means an energy purchase and sale agreement between Buyer and Seller containing the same price, delivery term, and other terms and conditions as contained in this Agreement, but with modifications as may be necessary and appropriate to reflect the development status of the Facility, the dates by which actions are to be taken by the Parties, any changes in SCE&G Transmission protocols, and similar matters, in each case, at the time the Alternative Agreement is entered.

"Applicable Program" means all present and future domestic, international or foreign renewable portfolio standard, renewable energy, emissions reduction or product reporting rights program, scheme or organization, adopted by a governmental authority or otherwise, or other similar program with respect to which exists a market, registry or reporting for particular Environmental Attributes. An Applicable Program includes any legislation or regulation concerned with renewable energy, oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or laws or regulations involving or administered by an

administrator, or under any present or future domestic, international or foreign RECs, Environmental Attributes or emissions trading program.

"Attachments" mean the schedules and exhibits that are appended hereto and are hereby incorporated by reference and made part of this Agreement. At the Effective Date, such Attachments include:

"Attachment A": Description of Facility

"Attachment B": Schedule of Rates

"Attachment C": Net Energy and REC Delivery Requirements

"Attachment D": Insurance Requirements

"Business Day" means any day other than Saturday, Sunday or a legal public holiday as designated in Section 6103 of Title 5, U.S. Code.

"Buy Down Date" shall have the meaning provided in Section 4.3(a) hereof.

"Buy Down Payment" shall have the meaning provided in Section 4.3(a) hereof.

"Buy Down Payment Refund" shall have the meaning provided in Section 4.3(b) hereof.

"Buyer" or "SCE&G" shall have the meaning provided in the introduction, including any permitted successors and assigns.

"Buyer's Meter(s)" shall have the meaning provided in Section 7.1 hereof.

"Buyer Entities" shall have the meaning provided in Section 12.1 hereof.

"Calendar Year" means the period from January 1 through December 31.

"Certificate" means a tradable instrument created and issued by the Tracking System representing the REC created by the generation of Net Energy by the Facility.

"Certified" or "Certification" means, if applicable, (i) the certification by the Administrator or its designee of (a) the creation and characteristics of a REC, (b) the qualification of the Facility or the Renewable Energy Resource under an Applicable Program, (c) Delivery of a REC or (d) other compliance with the requirements of an Applicable Program or (ii) any certification by a Certification Authority or its designee that is required pursuant to or in connection with any Applicable Program.

"Certification Authority" means an entity that certifies the generation, characteristics or Delivery of a REC, or the qualification of the Facility or Renewable Energy Resource under an Applicable Program.

“Commercial Operation” means the period beginning on the Commercial Operation Date and continuing through the Term of this Agreement during which time the Facility is generating Net Energy (and RECs and other related Environmental Attributes, as applicable) for sale to Buyer, excluding Test Energy.

“Commercial Operation Date” means the Business Day following the Business Day on which all of the following conditions for Commercial Operation have been satisfied:

- (a) All Conditions Precedent have been satisfied and all requirements under Sections 4.2 and 4.4 have been met;
- (b) Seller has successfully completed the testing of the Facility that is required under the Facility’s applicable Permits, manufacturers’ warranties, the Interconnection Agreement, and any other prerequisite testing for the commencement of Commercial Operation, and Seller has provided documentation of such successful testing to the satisfaction of Buyer;
- (c) the Facility has achieved initial synchronization with the Transmission System, and has demonstrated to Buyer’s satisfaction the reliability of its communications systems and communication with Buyer;
- (d) an independent professional engineer’s (registered in the state of South Carolina) certification has been obtained by Seller and provided to Buyer stating that (i) the Facility has been completed in all material respects (excepting punch list items that do not materially and adversely affect the ability of the Facility to operate as intended) in accordance with this Agreement and the Interconnection Agreement, (ii) all required Interconnection Facilities have been constructed, (iii) all required interconnection tests have been completed and the Facility is physically interconnected with the Transmission System in conformance with the Interconnection Agreement and is able to deliver energy consistent with the requirements of this Agreement, (iv) the Facility is capable of operating at no less than 85% of the Facility Rating without experiencing any abnormal or unsafe operating conditions or creating such conditions on the Distribution System or the Transmission System, (v) the Facility has a designed generating capability that does not exceed the Facility Rating; and (vi) that the Facility is ready for Commercial Operation in accordance with the terms of this Agreement (except for the independent professional engineer’s certification);
- (e) all arrangements for the supply of required electric services to the Facility have been completed by Seller, are in effect, and are available for the supply of such electric services to the Facility; and
- (f) Seller has submitted to Buyer a certificate of an officer of Seller familiar with the Facility stating that, to the best knowledge of such officer after due inquiry, all Permits, consents, licenses, approvals, and authorizations required to be obtained by Seller from any Government Agency to construct and to operate the Facility in compliance with applicable law and this Agreement have been obtained and are in full force and effect, and that Seller is in compliance with the terms and conditions of this Agreement and each Project Contract in all material respects.

“Commercial Operation Date Deadline” shall have the meaning provided in Section 4.4 hereof.

“Completion Date” shall have the meaning provided in Section 4.2 hereof.

“Completion Deadline” shall have the meaning provided in Section 4.2 hereof.

“Condition Precedent” refers to any condition precedent listed in Section 4.1 hereof.

“Confidential Information” shall have the meaning provided in Section 15.15 hereof.

“Confidentiality Agreement” means that certain confidentiality agreement entered into and made effective April 23, 2015, between SCE&G and Adger Energy, LLC.

“Contract Quantity” shall have the meaning provided in Section 3.5 hereof.

“Contract Year” means a Calendar Year except that (i) the first Contract Year (Contract Year 1) shall commence on the Commercial Operation Date and end on December 31 of the year during which the Commercial Operation Date occurs, and (ii) the last Contract Year (Contract Year 21) shall commence on January 1 of the Calendar Year immediately following Contract Year 20 and end on the day that is one day prior to the twentieth (20th) anniversary of the Commercial Operation Date.

“Control” means the direct or indirect power, whether by contract or through the ownership of capital stock or other equity interests, to elect a majority of such other Person’s board of directors or similar governing body, or to direct or cause the direction of management and policies of such Person.

“Cure Period” shall have the meaning provided in Section 11.1(i) hereof.

“Curtailed Energy” shall have the meaning provided in Section 5.1(f) hereof.

“Delay Damages” means a daily amount equal to \$8,000 per day.

“Deliver” or “Delivery” means Seller’s electronic delivery and transfer of the Certificate from Seller’s Account to Buyer’s Account via the Tracking System in accordance with the rules governing the Tracking System and the Applicable Program.

“Delivery Point” means the location of the Buyer’s Meter(s) that will be located immediately adjacent to the SCE&G switching station that will be located at the following coordinates (33.670263, -81.754332).

“Delivery Term Security” means a form of security posted by Seller in order to secure its obligations after the Commercial Operation of the Facility in an amount equal to \$2,250,000, in the form of one or more of the following: (a) Letter of Credit, (b) a cash deposit, (c) a Parental Guarantee, or (d) such other form of credit support mutually agreed upon by the Parties, all of which shall be subject to the terms set forth in Section 9.4.

"Demand" shall have the meaning provided in Section 14.3(b).

"Distribution System" means SCE&G's distribution system consisting of electric lines, electric plant, transformers and switchgear used for conveying electricity to ultimate consumers, but not including any part of the Transmission System.

"Development Period Security" means a form of security posted by Seller in order to secure its obligations prior to the Commercial Operation of the Facility in an amount equal to \$2,250,000, in the form of one or more of the following: (a) Letter of Credit, (b) a cash deposit, (c) a Parental Guarantee, or (d) such other form of credit support mutually agreed upon by the Parties, all of which shall be subject to the terms set forth in Section 9.3.

"Early Termination Fee" means:

(a) If Buyer is the Party obligated to pay the Early Termination Fee, a payment to be made by Buyer to Seller in the amount of the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of the cash flows equal to the Buyer's purchase obligations hereunder with respect to the Net Energy and, as applicable, RECs and other related Environmental Attributes of the Facility for the remaining term of the Agreement. This payment shall be calculated by applying the present value discount to the sum of the following: (A) the number of days remaining in the Term of the Agreement then in effect multiplied by the product of (x) the positive difference, if any, between the Net Energy Rate minus the Net Energy Market Price, multiplied by (y) the Average kWh Output plus (B) the product of the number of days remaining in the Term of the Agreement then in effective multiplied by the product of (x) the positive difference, if any between the price negotiated and agreed to by the Parties for RECs and other related Environmental Attributes minus the Net Energy Market Price for RECs and other related Environmental Attributes multiplied by (y) the expected daily number of such RECs and other related Environmental Attributes throughout the remainder of the term based on the Average kWh Output. . For purposes thereof, "Average kWh Output" means the daily average number of kWh of Net Energy actually delivered to Buyer from the Facility beginning on the start of Commercial Operation through the date of Buyer's Event of Default. If Buyer's Event of Default should occur prior to the completion of the first twelve (12) months after the start of Commercial Operation of the Facility, for purposes hereof, it shall be assumed that the "Average kWh Output" of the Facility during such partial year of Commercial Operation was the expected daily number of kWh of Net Energy, as reasonably determined by an independent engineer in connection with the Commercial Operation Date, which amount shall be no greater than the amount calculated by dividing 85% of the "Contract Quantity" for "Contract Year 2" as set forth by the Facility in Attachment C by 365 days.

(b) If Seller is the Party obligated to pay the Early Termination Fee, a payment to be made by Seller to Buyer in the amount of the then-present value (discounted at the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of determination) of the cash flows associated with Seller's production and delivery obligations hereunder with respect to the Net Energy and, as applicable, RECs and other

related Environmental Attributes of the Facility for the remaining term of the Agreement. This payment shall be calculated by applying the present value discount to the sum of the following: (A) the product of the number of days remaining in the Term of the Agreement then in effect multiplied by the product of (x) the positive difference, if any, between the Net Energy Market Price minus the Net Energy Rate the Buyer would otherwise pay for such Net Energy multiplied by (y) the Average kWh Output; plus (B) the product of the number of days remaining in the Term of the Agreement then in effect multiplied by the product of (x) the positive difference, if any, between the Net Energy Market Price for RECs and other related Environmental Attributes to be sold with the Facility's generation hereunder minus the price negotiated and agreed to by the Parties for such RECs and other related Environmental Attributes multiplied by (y) the expected daily number of such RECs and other related Environmental Attributes throughout the remainder of the term based on the Average kWh Output. For purposes hereof, "Average kWh Output" means the daily average number of kWh of Net Energy actually delivered to Buyer from the Facility beginning on the start of Commercial Operation through the date of Seller's Event of Default; provided, however, that in no event shall the Average kWh Output be less than 85% of the Contract Quantities, in the aggregate, required for the remainder of the Term. If Seller's Event of Default should occur prior to the completion of the first twelve (12) months after the start of Commercial Operation of the Facility, for purposes hereof, it shall be assumed that the "Average kWh Output" of the Facility during such partial year of Commercial Operation was the expected daily number of kWh of Net Energy, as reasonably determined by an independent engineer in connection with the Commercial Operation Date, which amount shall be no greater than the amount calculated by dividing 85% of the "Contract Quantity" for "Contract Year 2" as set forth by the Facility in Attachment C by 365 days.

"Effective Date" shall have the meaning provided in the introduction.

"Emergency" means any condition or situation requiring actions or inactions that are reasonably necessary in order to (i) comply with the ERO's Reliability Standards or any other applicable regulation or law, (ii) preserve public health and safety, (iii) limit or prevent damage, or (iv) expedite restoration of service.

"Emergency Condition" means (i) any urgent, abnormal, dangerous, and/or public safety condition that is existing or is imminently likely to result in material loss or damage to the Facility, the Transmission System, disruption or generation by the Facility, disruption of service on the Transmission System, and/or endangerment to human life or public safety; and, (ii) any circumstance that requires action by the System Operator to comply with standing ERO reliability requirements, including actions to respond to, prevent, limit, or manage material loss or damage to the Facility, the Transmission System, disruption of generation by the Facility, disruption of service on the Transmission System, and/or endangerment to human life or public safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or failure to perform as required under this Agreement, including, without limitation, failure to perform in accordance with Good Utility Practice.

"Energy" means the amount of electrical energy (including capacity, ancillary services associated with such electrical energy and capacity, and, as applicable, Environmental Attributes, and all current and future defined characteristics that count toward resource adequacy or reserve requirements) either used or generated over a period of time, expressed in terms of kilowatt-hour (kWh) or megawatt-hour (MWh) and produced by a photovoltaic solar power plant.

"Environmental Attributes" means all attributes (environmental or other) that are created or otherwise arise from the Facility's generation of electricity from a renewable energy source in contrast with the generation of electricity using nuclear or fossil fuels or other non-renewable resources. Forms of such attributes include, without limitation, any and all environmental air quality credits, green credits, RECs, carbon credits, emissions reduction credits, emission rate credits, certificates, tags, offsets, allowances (carbon dioxide and otherwise), solar renewable energy credits, tags, certificates or similar products or rights associated with solar as a "green" or "renewable" electric generation resource, or similar products or rights, howsoever entitled, (i) resulting from the avoidance or reduction of the emission of any gas, chemical or other substance, including but not limited to, mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil, and (ii) attributable to the generation, purchase, sale or use of Energy from or by the Facility, or otherwise attributable to the Facility during the Term. Environmental Attributes include, without limitation, those currently existing or arising during the Term under local, state, regional, federal, or international law or regulation relevant to the avoidance of any emission described in this Agreement under any governmental, regulatory or voluntary program, including, but not limited to, the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator (collectively with any local, state, regional, or federal entity given jurisdiction over a program involving transferability of Environmental Attributes). Notwithstanding the foregoing, the term Environmental Attributes shall exclude any and all state and federal production tax credits, any investment tax credits, tax incentives, or tax grants, and any other tax credits, tax incentives or tax grants which are or will be generated or earned by the Facility.

"Environmental Liability" means all loss, damage, expense, liability and other claims, including court costs and reasonable attorney fees arising out of or relating to the existence at, on, above, below or near the Facility of any Hazardous Substance.

"EPC Contract" means, individually or collectively as the context requires, engineering, procurement and construction agreements and/or balance of plant agreements for construction of the Facility to be entered into by and between Seller and the applicable contractor(s).

"ERO" means the North American Electric Reliability Corporation and its successor, if any.

"Event of Default" means any of the events listed in Section 11.1 hereof.

“Excusable Delay” means a delay resulting from any of the following: (a) a delay directly caused by Buyer or a Force Majeure Event, or (b) any delay in the Interconnection Utility’s completion of the Interconnection Facility by the date that is sixty (60) days prior to the Completion Deadline unless Seller directly or indirectly has caused such delay.

“Extension Payments” shall have the meaning provided in Section 4.2 hereof.

“Facility” means the ground-mounted photovoltaic solar power plant developed, constructed and operated pursuant to this Agreement and all equipment used to produce the electric energy generated at such solar power plant and being sold under this Agreement, including but not limited to, all photovoltaic solar panels, inverters, isolation transformers, buildings, and other facilities necessary to connect to the Delivery Point and produce the Net Energy and, as applicable, RECs and other related Environmental Attributes being sold under this Agreement, and all equipment that is owned or controlled by Seller required for parallel operation with the Transmission System.

“Facility Premise” means the real property, as more particularly described in the Attachment A hereto, on which the Facility will be located.

“Facility Rating” means the output potential the Facility can produce under specified conditions, which is generally expressed in kW-AC or MW-AC.

“FERC” means the Federal Energy Regulatory Commission.

“Final Installed Capacity” shall have the meaning provided in Section 4.3(a) hereof.

“Financing Party” means the Persons (including any trustee or agent on behalf of such Persons) providing financing or refinancing to or on behalf of Seller for the design, development, construction, testing, commissioning, operation or maintenance of the Facility (whether limited recourse, or with or without recourse).

“Force Majeure” shall have the meaning provided in Section 10.1 hereof.

“Good Utility Practice” means any of the practices, methods, standards and acts, (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of owners and operators of power plants in the United States that have the technology, complexity and size similar to the Facility) that, at a particular time in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result and goals (including such goals as efficiency, reliability, economy and profitability) in a manner consistent with applicable facility design limits and equipment specifications and applicable laws and regulations. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be generally accepted and consistently adhered to acceptable practices, methods or acts relevant to the activity and facts in question.

"Government Agency" means the United States of America, or any state or any political subdivision thereof, including without limitation, any municipality, township or county, and any domestic entity or body exercising executive, legislative, judicial, regulatory, administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing, any court of competent jurisdiction, or commission or governmental or regulatory authority or instrumentality or authorized arbitral body.

"Guaranteed Energy and REC Production" shall have the meaning provided in Section 3.5 hereof.

"Hazardous Substance" means any chemical, waste, or other substance (i) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to environmental health, safety or welfare, (ii) which is declared to be hazardous, toxic, or polluting by any Government Agency, (iii) exposure to which is now or hereafter prohibited, limited or regulated by any Government Agency, (iv) the storage, use, handling, disposal or release of which is restricted or regulated by any Government Agency, or (v) for which remediation or cleanup is required by any Government Agency.

"Indemnified Party" shall have the meaning provided in Section 12.1 hereof.

"Indemnifying Party" shall have the meaning provided in Section 12.1 hereof.

"Interconnecting Utility" means that utility (which in this case shall be the Buyer or an Affiliate of Buyer) providing interconnection service for the Facility to the Transmission System or Distribution System of that utility.

"Interconnection Agreement" means an agreement between the Interconnecting Utility providing interconnection service for the Facility to the Transmission System or Distribution System of the Interconnecting Utility, as the same may be amended from time to time.

"Interconnection Condition" means that Seller has entered into and executed the Interconnection Agreement for the intended capacity of the Facility.

"Interconnection Facilities" means all facilities and equipment between the Facility and the Delivery Point, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Facility to the Transmission System.

"Interest Rate" shall have the meaning given to it in Section 8.1(d).

"Letter(s) of Credit" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having assets on its most recent audited balance sheet of at least Ten Billion Dollars (\$10,000,000,000)

and a credit rating assigned to its senior long-term unsecured debt obligations of at least A- from Standard & Poor's Ratings Services or A3 from Moody's Investors Service, in a form approved by Buyer.

"Maintenance Outage" means the temporary operational removal of the Facility from service to perform work on specific components of the Facility, at a time when the Facility must be removed from service before the next Scheduled Outage in the interest of safety or the prevention of injury or damage to or undue wear and tear on the Facility or any component thereof.

"Major Equipment" means all solar photovoltaic modules, trackers and inverters required for the Facility to achieve Commercial Operation by the Commercial Operation Date Deadline.

"Milestone" shall have the meaning given to it in Section 5.3(c).

"Nameplate Capacity" shall have the meaning set forth in the recitals.

"Net Energy" means, for the period being considered, the actual total amount of Energy generated by the Facility less any Energy generated by the Facility that is consumed for the operation of the Facility and less any losses up to the Delivery Point, as measured according to the metering provisions in Article VII.

"Net Energy Market Price" shall mean the market price for the Net Energy and, as applicable, RECs and other related Environmental Attributes to be produced and generated by the Facility and sold hereunder during the applicable time period considered as determined in a commercially reasonable manner based upon the average of two price quotes from brokerage firms reasonably selected by Buyer and not affiliated with either Party. In each case, such market price shall be determined under then current market conditions with respect to an assumed agreement for the balance of the Term for the purchase of the Net Energy and, as applicable, RECs and other related Environmental Attributes that Seller is obligated to provide hereunder as of the time the Termination Date is declared. Factors used in determining such market price may include a comparison of comparable transactions, third party quotations from leading dealers in energy contracts, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), the remaining Term and the Seller's current discount rates. Each broker will be required to provide reasonable detail in writing as to its determination of its price quotation.

"Net Energy Rate" has the meaning assigned to it in Attachment B.

"Notice of Completion" shall have the meaning provided in Section 4.2 hereof.

"Parental Guarantee" means a guarantee from a satisfactory parent guarantor of Seller that is acceptable to Buyer and meets all the requirements of Article 9 as if it were Seller. The Parental Guarantee shall be in form and substance satisfactory to Buyer in its discretion.

"Party" and "Parties" shall have the meanings assigned to it in the Preamble.

"Performance Assurance" means the Development Period Security and Delivery Term Security, as applicable.

"Performance Liquidated Damages" has the meaning set forth in Section 3.5 hereof.

"Permit" means all state, federal and local authorizations, certificates, permits, licenses and approvals required by any Governmental Agency for the construction, operation and maintenance of the Facility.

"Person" means an individual, partnership, corporation, association, joint stock company, trust, joint venture, unincorporated organization, or Governmental Agency (or any department, agency, or political subdivision thereof).

"Product Reporting Rights" means the exclusive right, as applicable, to report sole ownership of a Renewable Energy Certificate, and all other Environmental Attributes, to any Certification Authority, Administrator, Government Agency or other party under any present or future Applicable Program, and, including without limitation, purposes of compliance, marketing, advertising, and/or otherwise.

"Project Contracts" means this Agreement, and any other contract required to construct, operate and maintain the Facility. The Project Contracts may include, but are not limited to, the turnkey engineering, procurement and construction contract, the electric transmission interconnection agreement and transmission operating agreement, and the operation and maintenance agreement.

"PURPA" means the Public Utility Regulatory Policies Act of 1978.

"Qualifying Facility" or "QF" means a cogenerator, small power producer, or non-utility generator that has been certified by or self-certified with the FERC as meeting certain ownership, operating and efficiency criteria established by the FERC pursuant to the PURPA, the criteria for which are currently set forth in 18 C.F.R. § 292, et seq. (2006), Section 210 of PURPA, 16 U.S.C. § 824a-3 (2005), 16 U.S.C. 796, et seq. (2006), and Section 1253 of EPAct 2005, Pub. L. No. 109-58, § 1253, 119 Stat. 594 (2005) or, alternatively, analogous provisions under the laws of the State of South Carolina.

"Regulatory Event" shall have the meaning provided in Section 15.22 hereof.

"Renewable Energy Certificate" or "REC" means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled representing generation of one (1) megawatt hour of energy (or another particular quantity of energy as may be specified by an Applicable Program) generated by the Facility in tandem with the Net Energy produced by the Facility and sold to the Buyer hereunder. A REC shall represent all title to and claim over all of the Environmental Attributes and Product Reporting Rights associated with the electrical energy generated by a Facility.

"Renewable Energy Resource" means the generation source for the production of RECs, in this case, a solar energy resource.

"Representatives" shall have the meaning provided in Section 15.15 hereof.

"Required Final Installed Capacity" means not less than 71.0 MW-AC of Nameplate Capacity.

"Requirements of Law" means any federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, decree or Permit enacted, adopted, issued or promulgated by any Government Agency, including, without limitation, (i) those pertaining to the creation and delivery of the Net Energy (and Environmental Attributes, as applicable), (ii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iii) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage.

"Scheduled Outage" shall have the meaning provided in Section 6.1 hereof.

"SCE&G Transmission" means the Electric Transmission Department of SCE&G.

"SCE&G's Open Access Transmission Tariff" or "OATT" means the OATT of SCE&G on file with the FERC.

"SCPSC" shall have the meaning provided in Section 15.18 hereof.

"Seller" shall have the meaning provided in the introduction, including any permitted successors and assigns.

"Seller Entities" shall have the meaning provided in Section 12.1 hereof.

"Shortfall" shall have the meaning provided in Section 3.5 hereof.

"System Operator" means the operators of the Transmission System that have the responsibilities for ensuring that the Transmission System as a whole operates safely and reliably, including without limitation, the responsibilities to balance generation supply with customer load and provide dispatch and curtailment instructions to generators supplying energy to the Transmission System, and includes any person or entity delivering any such instruction to Seller.

"System Operator Instruction" means any order, action, requirement, demand, or direction from the System Operator using Good Utility Practice delivered to Seller in a non-discriminatory manner to operate, manage, and/or otherwise maintain safe and reliable operations of the Transmission System, including, without limitation those undertaken and implemented by the System Operator, but in its sole discretion based on relevant Transmission System factors and considerations (including any and all operating characteristics, maintenance requirements, operational limitations, reliability (including,

without limitation, standing ERO regulations), safety, dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other Transmission System considerations), which by way of example, if meeting the criteria above, may include, without limitation, an order or action to: (i) interconnect, disconnect, integrate, operate in parallel, or synchronize with the Transmission System, (ii) increase (based on generator characteristics and Good Utility Practice), reduce or cease generation output to comply with standing ERO regulations; (iii) perform or cease performing any activity so as to operate in accordance with Transmission System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability must-run generation to accommodate generation by the Facility; and, (iv) suspend or interrupt any operational activity for an Emergency Condition or Force Majeure event; provided, however, a System Operator instruction in response to an Emergency Condition or Force Majeure event relating specifically to the Facility shall be deemed to be non-discriminatory.

“Term” shall have the meaning provided in Section 3.1 hereof.

“Termination Date” shall have the meaning provided in Section 11.2(a) hereof.

“Termination Notice” shall have the meaning provided in Section 11.2(a) hereof.

“Termination Payment” shall mean (i) when Buyer is the defaulting Party, the Early Termination Fee plus all other charges, expenses, amounts, and obligations to be paid to Seller as set forth in Section 11.5, and (ii) when Seller is the defaulting Party, the formula for the Termination Payment set forth in Section 11.3, or the Early Termination Fee plus all other charges, expenses, amounts, and obligations to be paid to Buyer as set forth in Section 11.4 hereof, as applicable.

“Test Energy” means any Net Energy generated by the Facility and delivered to the Delivery Point prior to the Commercial Operation Date of the Facility.

“Test Energy Rate” has the meaning assigned to it in Attachment B.

“Tracking System” means the system that accounts for the generation, sale, purchase, and/or retirement of RECs, and any other tracking system applicable to an Applicable Program as the context requires.

“Transmission System” means SCE&G’s system of electric lines comprised wholly or substantially of high voltage lines, associated system protection, system stabilization, voltage transformation, and capacitance, reactance and other electric plant used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another, or to or from the Delivery Point or to ultimate consumers and shall include any interconnection owned by SCE&G, but shall in no event include any lines that SCE&G has specified to be part of the Distribution System except for any distribution facilities required to accept Net Energy from the Facility.

ARTICLE II

FACILITY DESCRIPTION AND QUALIFYING FACILITY STATUS

2.1 **Facility Description and Generation Capabilities.** A detailed description of the Facility, including, inter alia, its location, technology, solar power plant size, and net output (MW), is set forth in Attachment A. A scaled map and drawings that identify the Facility Premises, the location of the Facility on the Facility Premises, the location of the Delivery Point and the location of all meters and related measuring equipment, monitoring system, and other important ancillary facilities and Interconnection Facilities are included in Attachment A. Attachment A will be revised and supplemented as Facility engineering and design drawings and specifications are finalized.

2.2 **Facility Specifications.** Seller, at its sole expense, will design, construct, maintain, provide security for, operate and repair the Facility (a) according to Good Utility Practice; and (b) to meet the requirements of this Agreement, including but not limited to the Nameplate Capacity and those other specifications listed on Attachment A. Seller shall not expand the Nameplate Capacity of the Facility without Buyer's consent.

2.3 **Maintenance of Facility's Status.** Seller shall use only solar photovoltaic as the source of energy for the Net Energy and, as applicable, RECs and other Environmental Attributes sold to Buyer hereunder, and shall maintain the status of the Facility as a Qualifying Facility throughout the Term of this Agreement. Seller shall at all times keep Buyer informed of any material changes in its business that affects its status as a Qualifying Facility. Buyer shall have the right, upon reasonable notice of not less than twenty-four (24) hours (and immediately, subject to the terms below, in the case of an Emergency), to read meters, to inspect the Facility and to examine any books, records, or other documents and take any other actions reasonably deemed necessary to perform and or verify compliance under this Agreement. In the event of an Emergency impacting Buyer's system that occurs at or near the Facility, Buyer shall make reasonable efforts to notify the Seller and make arrangements for an emergency inspection. On or before March 31 of each year during the Term of this Agreement, Seller shall provide Buyer a certificate signed by an officer of Seller certifying that the Facility has continuously maintained its status as a Qualifying Facility during the prior Calendar Year.

ARTICLE III

TERM, PURCHASE AND SALE, ENVIRONMENTAL ATTRIBUTES

3.1 **Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall continue unless otherwise terminated in accordance with its terms until the end of the twenty-first (21st) Contract Year (the "Term"). Buyer's obligation to purchase and Seller's

obligation to sell the Net Energy created by the Facility as set forth herein shall be effective when the Facility generates Test Energy.

(b) Notwithstanding the foregoing and the other termination rights set forth in this Agreement, Seller may terminate this Agreement prior to the Commercial Operation Date in the event that Seller is unable to obtain financing for the Project on terms and conditions reasonably satisfactory to it; provided, that Seller's right to terminate the Agreement pursuant to this Section 3.1(b) shall expire on the date that is ten (10) months prior to the Commercial Operation Date Deadline if no termination notice has been given by Seller prior to such date. For purposes of this Section 3.1(b), pursuant to Section 4.6, the Commercial Operation Date Deadline shall be adjusted for any notification from Seller to Buyer of the expectation to achieve Commercial Operation on a date that is more than three months earlier than the Commercial Operation Date Deadline.

3.2 Purchase and Sale. Buyer agrees to purchase the entire Net Energy of the Facility (which may include RECs and other related Environmental Attributes, as applicable) during the Term and to accept delivery of the Net Energy at the Delivery Point during the Term, subject to the terms of this Agreement. Seller agrees to sell to Buyer the entire Net Energy of the Facility during the Term and acknowledges that Buyer is entitled to receive all Net Energy from the Facility (including all RECs and other related Environmental Attributes, as applicable) during the Term, except as otherwise provided in this Section 3.2. During any ongoing Event of Default by Buyer, Seller may sell the Net Energy and RECs and other related Environmental Attributes, as applicable, to any third party. Title to and risk of loss for the Net Energy (and related Environmental Attributes, as applicable) shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Net Energy (and all related Environmental Attributes, as applicable) at the Delivery Point, free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

3.3 Net Energy Rate: Test Energy Rate. Buyer shall pay Seller for the Net Energy made available for delivery to Buyer at the Net Energy Rate for the applicable period in which service is provided as set forth in Attachment B. Buyer shall purchase all Test Energy produced by the Facility during startup and testing at the Test Energy Rate. Seller and Buyer agree that the applicable Net Energy Rate is intended to compensate Seller for all of the electrical output of the Facility delivered to Buyer and all RECs and other related Environmental Attributes, as applicable.

3.4 Generator Interconnection and Transmission Service. Seller shall enter into the necessary agreements for generator interconnection, as required, with SCE&G Transmission, and Buyer shall make any transmission-related arrangements for delivery of the Facility's Net Energy from the Delivery Point. Seller is responsible for any transmission losses that occur prior to the Delivery Point.

3.5 Contract Quantity and Guaranteed Energy Production. Seller has estimated that following the Commercial Operation Date, the Facility will deliver an annual expected performance output of Net Energy and, as applicable, RECs and other related Environmental

Attributes for each year of the Term as set forth in Attachment C (the "Contract Quantity"); provided that the Contract Quantity for Net Energy shall be reduced on an equitable basis due to any of the following: Interconnecting Utility outages, Buyer's inability to accept Net Energy, any directive of SCE&G Transmission or other curtailments pursuant to Section 5.1(f), and any events of Force Majeure. If, starting with the second Contract Year, the Facility fails to deliver eighty-five percent (85%) of the Contract Quantity (as adjusted, and regarding Net Energy and RECs, as applicable) in any particular Contract Year (the "Guaranteed Energy and REC Production"), then a shortfall of Net Energy and, as applicable, RECs with respect to such Contract Year equal to the difference between the Guaranteed Energy and REC Production and the Net Energy actually delivered and the RECs actually Delivered, as applicable (a "Shortfall") shall be deemed to exist, and Seller shall pay to Buyer in respect of such Shortfall an amount equal to the positive difference in cost (above the Net Energy Rate) of acquiring replacement Net Energy and RECs, as applicable, multiplied by one hundred and twenty percent (120%) ("Performance Liquidated Damages"), which Performance Liquidated Damages shall be paid on the monthly payment date immediately succeeding the Contract Year for which Seller's obligation to pay such amounts arose. Notwithstanding the foregoing, and excluding in all respects the final Contract Year of the Term, Seller's maximum payment obligation for Performance Liquidated Damages for any Contract Year during the Term shall be two million dollars (\$2,000,000) (the "Annual LD Payment Cap"); provided that any unpaid Performance Liquidated Damages (including such amounts in excess of the Annual LD Payment Cap) for such Contract Year shall carry over into the immediately following Contract Year and be used to set off any amounts owed by Buyer to Seller under this Agreement. Seller retains the right to adjust the quantities in Attachment C to quantities mutually agreed upon by the Parties, as required based on final equipment selection. Seller must provide Notice to Buyer of such adjustments to the quantities in Attachment C no less than one year prior to the Commercial Operation Date. Within two (2) Business Days following the Commercial Operation Date, Seller shall provide Buyer with the pro-rated quantities, to be mutually agreed upon by the Parties, for Contract Year 1 and Contract Year 21 in Attachment C. Such pro-rated quantities shall be based, for Contract Year 1, on the Contract Quantity for Contract Year 2, and for Contract Year 21, on the Contract quantity for Contract Year 20.

3.6 Facility Accreditation. Seller agrees to cooperate with Buyer in taking such reasonable actions as are necessary for Buyer to obtain accreditation of the Facility to the maximum extent practicable, in order to permit Buyer to (a) count such Facility in connection with satisfying applicable resource adequacy requirements, and (b) designate this Agreement as a designated network resource under the terms of SCE&G's Open Access Transmission Tariff, provided however, that this provision shall not impose on Seller any obligation to incur costs associated with such cooperation.

3.7 Environmental Attributes and Federal Tax Incentives. As applicable, RECs and other Environmental Attributes at any time allocated to the Facility and/or associated with Net Energy produced from the Facility shall be transferred to Buyer as provided herein in association with the sale of the Net Energy; provided, however, Seller shall retain any and all state and federal production tax credits, any investment tax credits, tax incentives, or tax grants, and any other tax credits, tax incentives or tax grants which are or will be generated

by the Facility. As applicable, prior to the initial delivery of Test Energy to Buyer, Seller, at its expense, shall register the Facility, and throughout the Term, the RECs generated by the Facility, with the Tracking System directed by Buyer to Seller, and Seller, at its expense, shall take all actions necessary to ensure that all RECs generated by the Facility are promptly recorded on such Tracking System and promptly transferred to the account of Buyer on such Tracking System. Upon either Party's receipt of notice from an Administrator that the transfer of RECs pursuant to this Agreement will not be recognized or Delivery was not made as required, that Party will immediately so notify the other Party, providing a copy of such notice, and both Parties will cooperate, as applicable, in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and such RECs Delivered. Upon Buyer's reasonable request from time to time, Seller will execute and deliver any instrument of sale, transfer, assignment, or release which Buyer determines is necessary or desirable to complete Delivery.

3.8 Environmental Attribute Accreditation. Seller agrees to cooperate with Buyer in taking such actions as are reasonably necessary to obtain accreditation of Environmental Attributes (including but not limited to RECs) associated with the Facility to the maximum extent practicable, including, but not limited to, providing any attestations, meter readings, and other support for the existence and ownership of any Environmental Attributes (including, but not limited to, RECs) by Buyer. Among other things, Seller will cooperate with, and use its commercially reasonable efforts to support Buyer's efforts to use any Environmental Attributes delivered hereunder for compliance with any Applicable Program.

3.9 Purchase of Environmental Attributes.

(a) In the event that, prior to the Commercial Operation Date, Seller, or an Affiliate of Seller, desires to sell, transfer or assign the Environmental Attributes from the Facility to a third party that is not an Affiliate of Seller, Seller shall first, prior to it (or its Affiliate) entering into any discussions with other parties, provide written notice to Buyer of its desire to sell the Environmental Attributes to Buyer at the purchase price and on the terms and conditions contained therein (the "Offer Notice"). Within fifteen (15) days after the Offer Notice is given, Buyer shall provide written notice to Seller if it is interested in acquiring the Environmental Attributes at the purchase price and on the terms provided in the Offer Notice (a "Notice of Interest"). If Buyer delivers such notice, the Parties agree to engage for a period of thirty (30) days thereafter in exclusive good faith negotiations to reach agreement with respect to such a transaction for the sale of Environmental Attributes. If during this period the Parties execute a letter of intent, or other document similarly confirming the Parties' intent to enter into a transaction for the purchase and sale of the Environmental Attributes, then such exclusive negotiation period shall be automatically extended for an additional sixty (60) day period, during which time the Parties may execute a purchase and sale agreement for the Environmental Attributes. Seller and its applicable Affiliate may pursue any transaction for the sale, transfer, assignment of the Environmental Attributes with one or more third parties at any time and from time to time at the same or higher purchase price and on terms and conditions no less favorable to Seller than those stated in the Offer Notice (with no further obligation to offer the same to Buyer) following an occurrence of any of the following: (i) Buyer expressly declines interest in acquiring the Environmental Attributes after receipt of

Seller's notice provided pursuant to the first sentence of this paragraph; (ii) Buyer fails to respond to the Offer Notice within fifteen (15) days after receipt thereof; (iii) Seller and Buyer fail to execute a letter of intent or other similar document with respect to the sale of the Environmental Attributes within thirty (30) days after Seller's receipt of the Offer Notice from Buyer; or (iv) Seller and Buyer fail to execute a purchase and sale agreement for the Environmental Attributes within ninety (90) days after Seller's receipt of a Notice of Interest from Buyer. Notwithstanding the foregoing, if the Seller (a) does not consummate a proposed transfer of the Environmental Attributes to one or more third parties within twelve months after first providing Buyer with an Offer Notice, and after such period still desires to sell, transfer, or assign the Environmental Attributes, then it must again offer to sell, transfer, or assign the Environmental Attributes to Buyer pursuant to the terms of this Section 3.9(a); or (b) wishes to sell, transfer, or assign the Environmental Attributes to any third party at a lower price or on terms and conditions less favorable to Seller from those in the Offer Notice, then before doing so, it must first offer to sell, transfer, or assign the Environmental Attributes to the Buyer at the same purchase price and terms and conditions pursuant to the terms of this Section 3.9(a).

(b) In the event that Buyer and Seller reach agreement on the terms and conditions for the purchase and sale of Environmental Attributes associated with the Facility, such terms and conditions shall be memorialized either by making conforming amendments to this Agreement, or by entering into a separate purchase and sale agreement for such Environmental Attributes.

ARTICLE IV

CONDITIONS PRECEDENT

4.1 Conditions Precedent. Prior to Buyer's obligation to accept Test Energy and Net Energy, Seller shall satisfy the following Conditions Precedent:

- (a) Seller shall have obtained all necessary Permits;
- (b) Seller shall have entered into the Project Contracts in a form and substance satisfactory to Seller in its reasonable discretion;
- (c) Seller shall have successfully completed all pre-operational testing and commissioning in accordance with manufacturer guidelines;
- (d) Seller shall have obtained insurance policies or coverage in compliance with Article IX;
- (e) By Seller's efforts, Facility shall have been certified by or self-certified with the FERC as a Qualifying Facility; and
- (f) Seller shall have satisfied the Interconnection Condition.

4.2 Reasonable Efforts, Notice of Completion, Extension. Seller shall use commercially reasonable efforts to satisfy each Condition Precedent set forth in Section 4.1. Within five (5) Business Days of satisfaction (or waiver in writing) of each Condition Precedent set forth in Section 4.1, Seller shall deliver to Buyer a written acknowledgment that such Condition Precedent is satisfied, the date of such satisfaction, and accompanying documentation to reasonably demonstrate the achievement of such Condition Precedent. Upon satisfaction of all Conditions Precedent set forth in Section 4.1, Seller shall provide a written acknowledgment to Buyer ("Notice of Completion") stating and affirming that (i) the Facility is constructed in accordance with the terms and conditions of this Agreement and is ready to deliver Test Energy and Net Energy as provided in the Agreement; (ii) all Interconnection Facilities have been constructed in accordance with the terms and conditions of this Agreement and the Interconnection Agreement and are available to receive Test Energy and Net Energy from the Facility; and (iii) all Conditions Precedent set forth in Section 4.1 have been satisfied. Seller shall satisfy all Conditions Precedent and provide a Notice of Completion to Buyer (the "Completion Date") by no later than December 1, 2019, ("Completion Deadline"). Notwithstanding anything else herein to the contrary, the Completion Deadline may be extended as follows: (1) on a day-for-day basis for any and all Excusable Delays, not caused by Force Majeure, up to one hundred and eighty (180) days, in the aggregate, (any Excusable Delay caused by Force Majeure shall be subject to the rights and obligations of the Parties set forth in Section 10.2), and (2) in addition to any extensions for Excusable Delays, for up to one hundred twenty (120) days by Seller if (A), the Completion Deadline can reasonably be satisfied within the extension time requested by Seller; (B), Seller has been making diligent efforts to comply with the original Completion Deadline and continues to consistently make diligent efforts throughout the extended period to achieve the extended Completion Deadline; and (C), prior to such extension, Seller pays to Buyer, as liquidated damages, a sum in the amount of eight thousand dollars (\$8,000) per day multiplied by the extension of time requested by Seller ("Extension Payments"); provided, however, that if the Completion Date occurs prior to the end of such requested extension period, Buyer will credit Seller the amount of liquidated damages paid on a prorated basis for each day that the Completion Date occurs prior to the end of the requested extension period. In the event that Seller (x) cannot timely satisfy any Milestone, (y) cannot timely satisfy any Condition Precedent, and does not or cannot pursue an extension, or (z) cannot timely satisfy any Condition Precedent within the extension granted, thus, in either case, failing to meet the Completion Deadline, or the Commercial Operation Date Deadline, then in addition to any payments owed by Seller to Buyer under this Section 4.2, Buyer shall be entitled to liquidated damages in the amount of \$700,000 upon termination of this Agreement in accordance with Sections 11.2 and 11.3; provided further, however, that nothing herein shall be deemed to limit Seller's termination rights pursuant to Section 3.1(b) hereof.

4.3 Seller Buy Down.

(a) If Commercial Operation is achieved based on a Nameplate Capacity of the Facility which is below the Required Final Installed Capacity, and the Facility has not achieved Commercial Operation with respect to a Nameplate Capacity of not less than the Required Final Installed Capacity by the date that is one hundred eighty (180) Days after the

Commercial Operation Date (the "Buy Down Date"), Seller shall notify Buyer in writing within three (3) Business Days of the Buy Down Date, that the Guaranteed Energy and REC Production will be reduced to reflect the total Nameplate Capacity of the Facility which has achieved Commercial Operation as of the Buy Down Date (the "Final Installed Capacity"). In such event, Seller shall pay to Buyer liquidated damages (the "Buy Down Payment") in an amount equal to (i) the Required Final Installed Capacity, *minus* the Final Installed Capacity in MW-AC, *multiplied* by (ii) Three Hundred Thousand dollars (\$300,000). Upon Seller's payment of the Buy Down Payment, the Contract Quantities and Guaranteed Energy and REC Production requirements for each Contract Year shall be reduced pro rata based upon the Final Installed Capacity as of the Buy Down Date.

(b) If, at any time within two (2) years of the date that Seller pays the Buy Down Payment to Buyer, Seller commences or recommences the construction, installation, commissioning or operation of additional solar photovoltaic modules, trackers and inverters at the Facility in excess of the Final Installed Capacity (the "Additional Equipment"), then Seller shall provide written notice of such event to Buyer. For a period of thirty (30) Days following Buyer's receipt of such notice, Buyer shall be entitled to exercise an option to pay to Seller an amount (the "Buy Down Payment Refund") equal to (a) the product of (i) Three Hundred Thousand dollars (\$300,000) and (ii) the aggregate capacity in MW added to the Facility beyond the Final Installed Capacity as a result of such Additional Equipment which would not cause the total Nameplate Capacity of the Facility to exceed 74.9 MW-AC (the "Additional Qualifying Nameplate Capacity") *multiplied* by (b) a fraction, the numerator of which is (i) two hundred thirty-four (234) *minus* (ii) the number of months (calculated to the second decimal place) that have elapsed from the date that the Buyer received the Buy Down Payment until the date that payment of the Buy Down Payment Refund is made to Seller, and the denominator of which is two hundred thirty-four (234). Upon Buyer's payment of the Buy Down Payment Refund, the Contract Quantities and Guaranteed Energy and REC Production requirements for each Contract Year shall be increased pro rata based upon the Additional Qualifying Nameplate Capacity. If Buyer exercises such option, the Additional Qualifying Nameplate Capacity shall thereafter be included in the Final Installed Capacity and the definition of "Facility" for all purposes of this Agreement and Seller shall sell, and Buyer shall purchase, all the Net Energy generated or associated with such Additional Qualifying Nameplate Capacity in accordance with the terms of this Agreement. If Buyer fails to exercise such option timely and pay the Buy Down Payment Refund to Seller, then Seller shall, as its exclusive remedy, be entitled to sell the output of all the Net Energy delivered from such Additional Equipment to any Person free of any claims by Buyer, provided that such Additional Equipment is separately metered from the Major Equipment that was initially installed as part of the Facility as of the Buy Down Date.

4.4 Commercial Operation Date. The Commercial Operation Date shall occur within sixty (60) days after the Completion Deadline, as extended pursuant to Section 4.2 (the "Commercial Operation Date Deadline"). Seller will give written notice to Buyer approximately thirty (30) days before Seller expects the Commercial Operation Date to occur and when the Commercial Operation Date has occurred.

4.5 Delay Damages.

(a) If the Commercial Operation Date is not achieved by the Commercial Operation Date Deadline (as extended pursuant to Section 4.2), Seller shall pay to Buyer Delay Damages for each such day of delay; provided, however, that if Buyer exercises its right to terminate this Agreement under Sections 11.2 and 11.3, Delay Damages shall be due and owing to the extent that such Delay Damages were due and owing as of the effective date of such termination.

(b) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller's delay in achieving or inability to achieve any Condition Precedent, the Completion Deadline and/or the Commercial Operation Date Deadline would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Extension Payments, the liquidated damages provided at the end of Section 4.2, and the Delay Damages all as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. Notwithstanding the foregoing, this Article shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve the Completion Deadline and/or Commercial Operation Date Deadline. Any such termination damages shall be determined in accordance with Section 11.3.

(c) By the tenth (10th) day following the end of the calendar month in which Delay Damages first become due and continuing by the tenth (10th) day of each calendar month during the period in which Delay Damages accrue (and the following months if applicable), Buyer shall deliver to Seller an invoice showing Buyer's computation of such damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. If Seller fails to pay such amounts when due, Buyer may draw upon any Development Period Security for payment of such Delay Damages, and Buyer may exercise any other remedies available for Seller's default hereunder.

4.6 **Early Completion.** Seller may, but shall not be required to, achieve Commercial Operation on a date that is earlier than the Commercial Operation Date Deadline; provided, however, if Seller intends or expects to achieve Commercial Operation on a date that is earlier than three (3) months prior to the Commercial Operation Date Deadline, it must so notify Buyer of such date by no later than twelve (12) months prior to the Commercial Operation Date.

ARTICLE V

SELLER'S OBLIGATIONS

5.1 **Design, Construction and Operation of the Facility.** Seller shall:

(a) At its sole expense, design, engineer, and construct the Facility and all related facilities in accordance with Good Utility Practice and the Specifications.

(b) Seek, obtain, maintain, comply with and, as necessary, renew, and modify from time to time, at Seller's sole expense, the Permits and all other permits, certificates or other authorizations which are required by any applicable laws or Government Agencies as prerequisites to engaging in the sale of Net Energy (and RECs and other related Environmental Attributes, as applicable) at the Delivery Point as envisioned by the Agreement and to meeting Seller's obligation to operate the Facility consistently with the terms of the Agreement.

(c) At Seller's sole expense, operate and maintain, provide security for and repair the Facility in accordance with this Agreement and Good Utility Practice.

(d) At Seller's sole expense, obtain and maintain policies of general liability insurance in accordance with Article IX.

(e) Comply with all directives of SCE&G Transmission pursuant to the applicable agreements for generator interconnection and transmission service, and cooperate with all reasonable requests by Buyer relating to Buyer's compliance with any such directives relating to deliveries of Net Energy from the Facility. The Parties recognize that Seller's compliance with any such directives of SCE&G Transmission due to conditions on Buyer's Distribution System that require curtailment or interruption of Net Energy deliveries may result in reduced sales hereunder, without liability on the part of either Party. Notwithstanding the foregoing, Buyer shall have no right to curtail or interrupt Net Energy deliveries for economic reasons.

(f) Notwithstanding anything in this Article V to the contrary, no payment shall be due to Seller under Section 8.1 with respect to the Net Energy that is not delivered by Seller to the Delivery Point for any of the following reasons (such Net Energy, "Curtailed Energy"):

(i) delivery of Net Energy is curtailed through any SCE&G Transmission mechanism or procedure of any sort for redispatch, transmission loading, renewable integration procedures, or any similar or successor operating rules, procedures, or systems, and for any other reason, in each case in compliance with the Interconnection Agreement;

(ii) there is any curtailment by SCE&G Transmission in accordance with the Interconnection Agreement, or by the System Operator (if other than SCE&G Transmission), for delivery of the Net Energy from the Facility, including planned outages for Transmission System network upgrades impacting the Interconnection Facilities;

(iii) an Emergency Condition; or

(iv) an event of Force Majeure.

5.2 General Obligations.

(a) Seller, during the Term of the Agreement, shall pay all present or future federal, state, municipal, or other lawful taxes or fees applicable to Seller, or the Facility, or by reason of the sale of Net Energy and, as applicable, all RECs and other related Environmental

Attributes by Seller to Buyer up to and at the Delivery Point under the Agreement, plus all taxes associated with the generation and delivery of the Net Energy and, as applicable, RECs and other related Environmental Attributes.

(b) Seller shall purchase from Buyer all station power and energy used by the Facility and not provided by the Facility itself.

(c) Seller shall continue to (i) preserve, renew and keep in full force and effect, to the extent applicable, its organizational existence and good standing, and take all reasonable action to maintain all Permits, rights, privileges, licenses, and franchises necessary or desirable in the ordinary course of its business; (ii) comply with all applicable laws, and (iii) comply with all Project Contracts, material agreements, instruments and undertakings related to the Facility, except to the extent that any failure to so comply has not had, or is not reasonably likely to have, a material adverse effect on Seller's performance of its material obligations under this Agreement.

(d) Upon Buyer's request, Seller shall make available for Buyer's review the Project Contracts (or summaries thereof), Permits and other information in its possession, custody or control regarding the permitting, engineering, construction, condition and operations of the Facility, as Buyer may, from time to time, reasonably request; provided, however, that Seller may reasonably redact confidential information from Project Contracts (such redactions to be reasonably limited to an immaterial amount) and other non-public information to be made available to Buyer to comply with reasonable confidentiality obligations in favor of third parties. In addition, Seller shall provide to Buyer all information, instruments, documents, statements, certificates and records relating to this Agreement and/or the Facility as requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements determined by Buyer to fulfill any applicable law, regulatory reporting requirements or otherwise relating to any request by any Government Agency. Seller shall, at its own expense, provide Buyer with all information requested by Buyer to register, verify, or otherwise obtain the approval of any Government Agency, or any other third party recognition, of the Energy and RECs and other Environmental Attributes sold hereunder for use by Buyer, and at Buyer's request, Seller shall register, verify, or otherwise validate or obtain the approval of any Government Agency, or any other third party recognition, of the Energy and RECs and other Environmental Attributes sold hereunder for use by Buyer.

(e) Seller shall indemnify, defend, and hold Buyer harmless from and against all Environmental Liability; provided that Buyer shall indemnify, defend, and hold Seller harmless against, any Environmental Liability but only to the extent resulting from the gross negligence or intentional misconduct of Buyer or any of its officers, employees, agents, contractors or subcontractors while at the Facility.

(f) Seller shall indemnify, defend and hold Buyer harmless from and against all losses, liabilities or claims, including reasonable attorneys' fees and court costs, of any and all Persons for personal injury (including death) or property damage arising from or out of the operation of the Facility.

(g) The Facility shall be interconnected with SCE&G's Transmission System in accordance with the requirements for generator interconnection pursuant to SCE&G's Open Access Transmission Tariff.

(h) Seller acknowledges that any written notice and information required by Buyer is solely for monitoring purposes, and that nothing contained in this Agreement shall create or impose upon Buyer any responsibility or liability for the development, construction, operation or maintenance of the Facility or Interconnection Facilities.

(i) Notwithstanding any provision of this Agreement to the contrary, Seller agrees that: (a) Buyer shall have no responsibility whatsoever for any costs and/or Taxes relating to the design, development, construction, maintenance, ownership, or operation of the Facility (including but not limited to any financing costs, and any costs and/or Taxes imposed by any Government Agency on or with respect to emissions from or relating to the Facility, and including but not limited to costs and/or Taxes related to any emissions allowances inter alia for oxides for sulfur dioxide or nitrogen, carbon dioxide, and mercury), all of which shall be entirely at Seller's sole cost and expense; and, (b) any risk as to the availability of production tax benefits, investment tax credits, grants or any other incentives relating to the design, development, construction, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller. If any production or investment tax credit, grants, or any similar incentives or benefit relating to the Facility and/or Seller is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure or Regulatory Event; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; and, (c) give rise to any right by Seller to terminate or avoid performance under this Agreement; provided, however that nothing in this Section 5.2(i) shall limit Seller's termination rights pursuant to Section 3.1(b). Seller agrees that it will solely and fully bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.

(j) Seller agrees and acknowledges that the Interconnection Agreement is (and will be) a separate agreement between Seller and SCE&G Transmission. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible under the Interconnection Agreement. Notwithstanding any provision in this Agreement, nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and SCE&G Transmission on the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties, obligation, and liabilities hereunder. This Agreement shall not be construed to create any rights between Seller and SCE&G Transmission, and the terms of this Agreement are not (and will not) be binding upon SCE&G Transmission. Seller agrees and acknowledges that the System Operator will be solely responsible for its functions and that nothing in this Agreement will be construed to create any rights between Seller and the System Operator, and Seller agrees to fully comply with all System Operator Instructions.

(k) Generally Accepted Accounting Principles ("GAAP") and SEC rules can require Buyer to evaluate various aspects of its economic relationship with Seller, e.g., whether or not Buyer must consolidate Seller's financial information. To evaluate if certain GAAP requirements are applicable, Buyer may need access to Seller's financial records and personnel in a timely manner. In the event that Buyer determines that consolidation or other incorporation of Seller's financial information is necessary under GAAP, Buyer shall require the following for each calendar quarter during the term of this Agreement, within 90 days after quarter end: (a) complete financial statements, including notes, for such quarter on a GAAP basis; and, (b) financial schedules underlying the financial statements. Seller shall grant Buyer access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with GAAP standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer pursuant to this section shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed, as required by GAAP, on an aggregate basis with other similar entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external persons. Buyer shall give Seller prompt notice if any of the financial information specified above is to be required, and Seller shall commence providing such information as soon as reasonably requested by Buyer in compliance herewith, and otherwise, in accordance with the terms herein.

(l) Seller shall provide to Buyer all information, instruments, documents, statements, certificates, and records relating to this Agreement and/or the Facility as requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Governmental Authority. Seller shall, at its own expense, provide Buyer with all information requested by Buyer to register, verify, or otherwise obtain any Government Agency approval or any other third party recognition of the Net Energy (any Environmental Attributes, as applicable) for use by Buyer, and at Buyer's request Seller shall register, verify, or otherwise validate or obtain any Government Agency approval and/or any other third party recognition of the Net Energy (and any Environmental Attributes, as applicable) for use by Buyer.

5.3 Specific Obligations Related to Construction.

(a) Seller shall construct and install the Facility in a good and workmanlike manner. Prior to commencement of construction and installation of the Facility, Seller shall notify Buyer of the intended date of commencement of construction, and Buyer shall have the right to monitor construction and installation of the Facility. Upon completion of the construction and installation of the Facility, Seller shall provide Buyer with "as-built" drawings setting forth in as sufficient detail as required by Buyer in its reasonable discretion, the location of all components of the Facility.

(b) Within five (5) days after the end of each calendar month following the Effective Date and until the end of the month in which the Commercial Operation Date occurs, Seller shall prepare and submit to Buyer a written status report which shall cover the previous

calendar month, in a manner and format (hard copy and electronic) reasonably acceptable to Buyer and shall include (a) a detailed description of the progress of the Facility construction, (b) a statement of any significant issues which remain unresolved and Seller's recommendations for resolving the same, (c) a summary of any significant events which are scheduled or expected to occur during the following thirty (30) days, and (d) all additional information reasonably requested by Buyer. If Seller has reason to believe that the Facility is not likely to timely achieve any Condition Precedent, Milestone, the Completion Deadline, or the Commercial Operation Date Deadline, Seller shall provide written notice to Buyer with all relevant facts. Following the Commercial Operation Date, Seller shall promptly provide to Buyer information requested by Buyer to verify any amounts of delivered Net Energy (and Environmental Attributes, if applicable), or to otherwise audit the Net Energy (and Environmental Attributes, if applicable) delivered to Buyer. Seller shall provide Buyer with any other information germane to this Agreement reasonably requested by Buyer.

(c) Buyer shall have the right to terminate this Agreement upon thirty (30) days' prior written notice to Seller if the Facility fails to achieve any of the milestones (each a "Milestone") set forth in subsections 5.3(c)(i) through 5.3(c)(iii) by the applicable date indicated below. Such Milestone dates may be amended to the extent that Seller has provided to Buyer, not less than ten (10) days prior to the relevant Milestone date, a remediation plan that provides a detailed reasonable plan for causing the Facility to achieve the Milestone within sixty (60) days of the original date, and implements and diligently pursues such remediation plan to completion such that the applicable Milestone(s) are achieved within such sixty (60) day period:

(i) Failure by Seller to have entered into the Project Contracts and placed all required deposits pursuant thereto on or before ninety (90) days prior to the Commercial Operation Deadline; or

(ii) Failure by Seller to have issued notice to proceed under the EPC Contract on or before seventy-five (75) days prior to the Commercial Operation Deadline; or

(iii) Failure by Seller to take delivery of all Major Equipment pursuant to the Major Equipment Agreements on or before the day that is forty-five (45) days prior to the Commercial Operation Date Deadline. For purposes of this Section 5.3(c)(iii), pursuant to Section 4.6, the Commercial Operation date Deadline shall be adjusted for any notification from Seller to Buyer of the expectation to achieve Commercial Operation on a date that is earlier than the Commercial Operation Date Deadline.

5.4 Buyer Right of First Offer. If Buyer terminates this Agreement pursuant to Section 5.3(c), then for a period of two (2) years following the date of such termination Buyer (a) shall have an exclusive right pursuant to this Section 5.4 to enter into an Alternative Agreement to purchase the Net Energy from the Facility, or any portion thereof as specified by Buyer under an Alternative Agreement, or any other solar photovoltaic-powered electricity generating facilities on the Facility Premises, under an Alternative Agreement, and (b) Seller shall not be entitled to sell the Net Energy produced by the Facility or such other solar photovoltaic-powered electricity generation facilities, unless Seller shall, prior to

making an offer to, accepting an offer from or entering into any agreement with any other Person regarding the sale of the Net Energy produced by the Facility or such other solar photovoltaic-powered electricity generation facilities, have provided written notice to Buyer that Seller is prepared to enter into an Alternative Agreement to sell all the Net Energy produced by the Facility or such other solar photovoltaic-powered electricity generation facilities to Buyer. If Buyer provides written notice to Seller within thirty (30) Days of the date that Buyer receives such notice from Seller that Buyer desires to exercise its right to enter into an Alternative Agreement, then the Parties shall enter into good-faith negotiations to make those limited changes to the Alternative Agreement as are necessary and appropriate to reflect the development status of the Facility at the time the Alternative Agreement is entered into, the dates by which actions are to be taken by the Parties under the Alternative Agreement, any changes in SCE&G Transmission requirements, and similar matters within ten (10) Business Days after delivery of Buyer's notice, and the Parties shall execute and deliver the Alternative Agreement no later than thirty (30) Days following Buyer's notification to Seller of the exercise of its option pursuant to this Section 5.4. If Buyer does not provide written notice to Seller within thirty (30) Days after receiving Seller's notice, then Buyer shall have no further rights with respect to the Facility or any other solar photovoltaic-powered electricity generation facilities, and Seller may sell the output of the Facility or such other solar photovoltaic-powered electricity generation facilities without further restriction. This Section 5.4 shall survive the termination of this Agreement.

BUYER'S OBLIGATIONS

5.5 Distribution and Transmission Service. Buyer shall, at its expense, be responsible for obtaining firm service over the Distribution and/or Transmission Systems to the extent such service is necessary for delivery of the Net Energy of the Facility from the Delivery Point. Buyer shall provide Seller written notice that all essential facilities within Buyer's control are in place and operational prior to Buyer's receipt of Test Energy.

5.6 Cooperation. Buyer agrees to cooperate with Seller in any applications for Permits, certificates or other authorizations as described in Section 5.1(b). Buyer's obligation under this section shall consist only of providing nonproprietary information in its possession, custody or control necessary to complete any applications and responding to requests from the relevant Governmental Agencies or other Persons.

ARTICLE VI

ELECTRICITY PRODUCTION AND PLANT MAINTENANCE

6.1 Forecasting and Availability.

(a) No later than sixty (60) calendar days prior to the projected Commercial Operation Date, and prior to October 1 of each Calendar Year thereafter during the Term, and without waiving any rights of Buyer or the requirements and obligations of Seller specified in Section 3.5, Seller shall submit to Buyer in writing a good faith estimate of each

month's average-day energy production to be generated by the Facility and delivered to Buyer during the following Calendar Year, including the time, duration and magnitude of any scheduled maintenance period(s) or reductions in Net Energy to be delivered to Buyer. This forecast shall include an expected range of uncertainty based on historical operating experience. Seller shall update the forecast for each month at least five (5) Business Days before the first Business Day of such month. In addition, Seller shall update a forecast at any time information becomes available indicating a change in the forecast relative to the most previously provided forecast.

(b) Seller shall provide or cause to be provided to Buyer a copy of a rolling one hundred and twenty (120) hour forecast of the expected Net Energy production from the Facility, by hour, for each upcoming five (5) day period. This forecast shall include an expected range of uncertainty based on historical operating experience. On or before 0600 Eastern Prevailing Time on the Business Day immediately preceding the day on which Net Energy is to be delivered, Seller shall provide Buyer with an hourly forecast of availability for each hour of the next day. A forecast provided on a day before any non-Business Day shall also include forecasts for each day to and including the next Business Day. Seller shall update a forecast any time information becomes available indicating a change in the forecast of the Net Energy from the then-current forecast. The Parties shall cooperate to implement and use automatic forecast updates to the extent feasible. Without limiting the foregoing, Buyer shall utilize availability data provided by Seller to create rolling forecast of expected Net Energy production, by hour, for the next forty-eight (48) hours. To the extent Seller provides such forecasts it shall prepare such forecasts and updates (or cause such forecasts and updates to be prepared) by utilizing a solar prediction model or service (a) that is commercially available or proprietary to Seller or an Affiliate of Seller, and (b) reasonably comparable to models or services commonly used in the solar energy industry and that reflect solar availability, so long as such model or service is available at a commercially reasonable cost.

(c) In the event that Seller has any information or other commercially reasonable basis to believe that the production from the Facility on any day will be materially lower or higher than what would otherwise be expected based on the forecasts provided pursuant to Section 6.1, then Seller will inform Buyer of such circumstance by 0500 Eastern Prevailing Time on the preceding Business Day.

6.2 Plant Maintenance.

(a) The Parties agree to discuss coordinating planned maintenance schedules for the temporary operational removal of the Facility from service to perform work on specific components in accordance with a pre-planned operations schedule, such as for a planned annual overhaul, inspections, or testing of specific equipment of the Facility. Seller agrees to provide its proposed planned maintenance schedule for the next Calendar Year by October 1st of each Calendar Year. By October 31 of such Calendar Year, Buyer shall notify Seller in writing whether Seller's planned maintenance schedule is acceptable. If Buyer does not accept a particular planned maintenance period scheduled by Seller, Buyer shall advise Seller of the time period closest to the planned period when the outage can be scheduled.

Seller shall schedule outages only during periods approved by Buyer, and such approval shall not be unreasonably withheld (each a "Scheduled Outage"). Once the schedule for the maintenance plan has been established and approved, either Party requesting a subsequent change in such schedule, except when the change is due to Force Majeure, must obtain approval for such change from the other Party. Seller shall plan Scheduled Outages for the Facility in accordance with Good Utility Practice, and the Parties acknowledge that Good Utility Practice shall dictate when Scheduled Outages occur. Seller shall use its reasonable commercial efforts in accordance with Good Utility Practice to not plan Scheduled Outages during the following periods: June 1 through September 30. Scheduled Outages, in aggregate, shall not exceed seven (7) days during any Contract Year.

(b) If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available and the expected completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.

(c) Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Good Utility Practice.

(d) Seller shall act in a commercially reasonable manner to maximize the output of the Facility to generate the Net Energy and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Net Energy, in each case consistent with Good Utility Practice.

6.3 Communication. Seller shall comply with reasonable requests by Buyer regarding day-to-day and hour-by-hour communication between the Parties relative to electricity production and maintenance scheduling.

6.4 Seller's Plant Personnel. During the Term, Seller shall employ, or cause a qualified service provider engaged by Seller to employ qualified personnel for managing, operating and maintaining the Facility and for coordinating with Buyer. Seller shall ensure that

operating personnel are available at all times, twenty-four (24) hours per calendar day and seven (7) calendar days per week. Additionally, during the Term, Seller shall operate and maintain the Facility in such manner as to ensure compliance with its obligations hereunder and in accordance with applicable law and Good Utility Practice.

ARTICLE VII

METERING

7.1 **Metering Equipment.** The Net Energy delivered to Buyer, and the RECs and other Environmental Attributes Delivered to Buyer, shall be derived from data measured by the meter(s) and associated telecommunications equipment installed at the Delivery Point by SCE&G Transmission ("Buyer's Meter(s)") pursuant to any agreement between SCE&G Transmission and Seller for generator interconnection of the Facility. Seller shall authorize SCE&G Transmission to provide meter data to Buyer, and hereby grants Buyer with rights to physically access the Buyer's Meter. Seller shall be responsible for paying SCE&G Transmission for all costs relating to the Buyer's Meter, including, without limitation, its procurement, installation, operation, calibration, and maintenance. Seller shall ensure in its arrangement with SCE&G Transmission for the Buyer's Meter to include communication equipment that enables Buyer to access and read the meter from a remote location. Seller shall provide Buyer (at Seller's cost) with appropriate telephonic/electronic communication to allow Buyer to remotely read the meter. Except as provided in Sections 7.2 and 7.3, Buyer's Meter(s) shall be used for quantity measurements and billing under this Agreement. Seller, at its sole expense, may install and maintain check meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Net Energy delivered under this Agreement; provided, however, that such equipment shall be operated and maintained in a manner that does not interfere with the installation, maintenance, and operation of Buyer's Meter(s).

7.2 **Measurements.** Readings of Buyer's Meter(s) made by Buyer shall be conclusive as to the amount of Net Energy delivered to Buyer hereunder; provided, however, that if Buyer's Meter(s) is out of service or is determined, pursuant to Section 7.3 hereof, to be registering inaccurately, measurement of Net Energy delivered hereunder shall be determined by, in the following order:

- (a) Seller's check meter, if installed, annually tested and registering accurately; or
- (b) In the absence of an installed, annually tested and accurately registering check meter belonging to Seller, making a mathematical calculation if, upon a calibration test of Buyer's Meter, a percentage error is ascertainable; or
- (c) In the absence of an installed, annually tested and properly registering check meter belonging to Seller, and an ascertainable percentage of error in Buyer's Meter, estimating by reference to quantities measured during periods of similar conditions when Buyer's Meter was registering accurately; or

(d) If no reliable information exists as to the period over which Buyer's Meter was registering inaccurately, it shall be assumed for correction purposes hereunder that such inaccuracy began at a point in time midway between the testing date and the last previous date on which such meter was tested and found to be accurate; provided, however, that the deemed period of the inaccuracy shall not exceed one hundred eighty (180) days.

7.3 Testing and Correction. The accuracy of Buyer's Meter(s) shall be tested and verified by Buyer annually. Buyer shall have the right, at its own expense, to test and verify Seller's meter(s) upon reasonable notice, provided such testing shall not exceed one (1) test during a Calendar Year, or more frequently if there is just cause. If Seller has installed check meters in accordance with Section 7.1 hereof, Seller shall test and verify such meters annually. Each Party shall bear the cost of the annual testing of its own meters.

(a) If either Party disputes a meter's accuracy or condition, it shall so advise the meter's owner in writing. The meter's owner shall, within fifteen (15) days after receiving such notice, advise the other Party in writing as to its position concerning the meter's accuracy and reasons for taking such position. If the Parties are unable to resolve their disagreement through reasonable negotiations, either Party may submit such dispute to an unaffiliated third-party engineering company mutually acceptable to the Parties to test the meter.

(b) Should the meter be found to be registering within a one percent (1%) variance, the Party contesting the meter's accuracy shall bear the cost of inspection; otherwise, the cost shall be borne by the meter's owner. Any repair or replacement of such a meter found to be operating beyond the permitted one percent (1%) variance shall be made at the expense of the owner of that meter as soon as practicable, based on the third-party engineer's report. If, upon testing, any meter is found to be in error by an amount greater than a one percent (1%) variance, such meter shall be repaired or replaced promptly, any previous recordings by such meter shall be adjusted in accordance with Section 7.2, any prior payments made for Net Energy and/or invoices for payments not yet made shall be adjusted to reflect the corrected measurements determined pursuant to Section 7.2. If the difference of the payments actually made by Buyer minus the payment based upon the corrected measurements is a positive number, Seller shall pay the difference to Buyer; if the difference is a negative number, Buyer shall pay the difference to Seller. In either case, the Party paying such difference shall also pay interest as described in Section 8.1(d) for late payments and such payment (including such interest) shall be made within ten (10) days of receipt of a corrected billing statement.

7.4 Maintenance and Records. Each Party has the right to be present whenever the other Party tests and/or calibrates the equipment used in measuring or checking the measurement of the Net Energy delivered hereunder. Each Party shall endeavor to give notice of five (5) days, but in no event less than forty-eight (48) hours, to the other Party in advance of taking any such actions. The records from the measuring equipment remain the property of Seller or Buyer, respectively, but, upon request, each Party will provide access to the other, upon reasonable notice and during normal business hours, to review the Party's metering and billing and maintenance records, including supporting documentation, necessary to verify

the accuracy of bills. Each Party is permitted to audit such records of the other Party no more frequently than once each Calendar Year.

ARTICLE VIII

BILLING AND PAYMENT

8.1 Billing and Payment.

(a) Buyer shall read the meter or cause the meter to be read as soon as practicable after the last day of the previous calendar month and shall report such reading for the Net Energy delivered for the previous calendar month to Seller.

(b) Seller shall create and send an invoice to Buyer based on Buyer's Meter readings and Deliveries of RECs (if applicable).

(c) Buyer's payment to Seller for Net Energy received and RECs Delivered shall be paid by electronic funds transfer by the twentieth (20th) of each month or thirty (30) days following Buyer's receipt of Seller's invoice, whichever is later. If such date falls on a weekend or legal holiday, the due date shall be the next Business Day.

(d) Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at a rate equal to the average daily prime rate as determined from the "Money Rates" section of the Wall Street Journal (the "Interest Rate"), for the days of the late payment period multiplied by the number of days elapsed from and including the due date, to but excluding the payment date. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.

(e) If either Party hereto shall find at any time within one (1) year after the date of any payment hereunder that there has been an overcharge or undercharge, the Party finding the error shall promptly notify the other Party in writing. In the event of an undercharge, Buyer, within thirty (30) days of the date of the notice of error, shall pay the amount due plus interest accruing at the Interest Rate from the time of payment of the undercharge through the date of payment correcting the undercharge. In the event of an overcharge, Seller, within thirty (30) days of the notice of error, shall refund the overpayment plus interest accruing at the Interest Rate from the time of payment of the overcharge through the date of payment correcting the overcharge.

(f) Each Party shall have the right, at its sole expense during normal business hours, to examine the other Party's records, but only after prior notice and only to the extent necessary to verify the accuracy of any statement, charge, notice, or computation made hereunder.

ARTICLE IX

INSURANCE/CREDIT AND COLLATERAL REQUIREMENTS

9.1 **Insurance.** At all times during the Term of this Agreement, Seller shall maintain at its own expense insurance policies for the Facility and its tangible assets in such amounts and against such risks and losses as set forth in Attachment D hereto. Within ten (10) Business Days after receipt of a request for the same from Buyer, Seller shall deliver to Buyer a certificate of insurance for any or all policies maintained in accordance with this Section 9.1, which certificate shall include at least the following information: (i) the name of the insurance company, policy number and expiration date; and (ii) the coverage and limits on coverage, including the amount of deductibles or self-insured retentions.

9.2 **Grant of Security Interest/Remedies.** To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance hereunder, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of setoff against) the Performance Assurance and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Buyer's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon, or at any time after the occurrence and during the continuation of, an Event of Default by Seller, or a Termination Date as a result thereof or in connection with a claim by Buyer for indemnification under Article XIII, Buyer may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such legal rights and remedies then in effect; (ii) exercise its rights of setoff against such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all or any portion of any Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

9.3 **Development Period Security.** In order to secure Seller's obligations prior to Commercial Operation of the Facility, at Seller's expense, Seller shall post and maintain in favor of Buyer the Development Period Security in accordance with the following terms and conditions:

(a) The Development Period Security shall be posted within sixty (60) days of the Effective Date of this Agreement; provided, however, that if such Development Period Security is not posted within sixty (60) days of the Effective Date of this Agreement, Buyer may, at its sole and absolute discretion, terminate this Agreement upon written notice to Seller on or after the sixty-first (61st) day following the Effective Date of this Agreement, with

such termination right continuing until Buyer has posted the Development Period Security. Furthermore, Buyer shall have the right to draw and retain the full amount of the Development Period Security in connection with any of the following:

- 1) The termination of this Agreement pursuant to Section 3.1(b);
- 2) The termination of this Agreement pursuant to Section 5.3(c); or
- 3) The termination of this Agreement pursuant to Section 11.2 by the Buyer as the non-defaulting Party.

If this Agreement is terminated pursuant to Section 15.19(c), then the Development Period Security shall be returned to the Seller net of any outstanding balance owed by Seller to Buyer in accordance with the terms of this Agreement.

(b) If all or a portion of the Development Period Security is posted in a cash deposit, such deposit shall be held by Buyer, in a form and under terms which are acceptable to Buyer and Seller, to pay claims made by Buyer pursuant to this Agreement.

(c) Seller may change the form of the Development Period Security at any time and from time to time upon reasonable prior written notice to Buyer; provided that the Project Development Period Security shall at all times satisfy the requirements of this Agreement.

(d) Seller shall maintain the Development Period Security, and Buyer shall return or release its interest in any of the undrawn Development Period Security, if any, within fifteen (15) days after the earlier of (i) the date on which Seller has posted the Delivery Term Security, and (ii) all payment obligations of the Seller arising under this Agreement, including any Termination Payment, indemnification payments or other damages are paid in full.

(e) Seller shall replenish the Development Period Security to the full required amount within thirty (30) days following a draw against the Development Period Security by Buyer.

9.4 Delivery Term Security. In order to secure Seller's obligations during the Commercial Operation of the Facility, at Seller's expense, Seller shall post and maintain in favor of Buyer the Delivery Term Security in accordance with the following terms and conditions:

(a) On or before the thirtieth (30th) day following the Commercial Operation Date, Seller shall post the Delivery Term Security.

(b) If all or a portion of the Delivery Term Security is posted in a cash deposit, such deposit shall be held by Buyer, in a form and under terms which are acceptable to Buyer and Seller, to pay claims made by Buyer pursuant to this Agreement.

(c) Seller may change the form of the Delivery Term Security at any time and from time to time upon reasonable prior written notice to Buyer; provided that the Delivery Term Security shall at all times satisfy the requirements of this Agreement.

(d) Seller shall maintain the Delivery Term Security and Buyer shall return or release its interest in any of the undrawn portion of the Delivery Term Security, if any, within fifteen (15) days after the later of (i) the expiration of this Agreement, or (ii) all payment obligations of the Seller arising under this Agreement, including, but not limited to, any Termination Payment due under this Agreement if this Agreement is terminated due to an Event of Default, any indemnification payments or other damages, are paid in full; provided that if Seller is the Defaulting Party, any undrawn portion of the Delivery Term Security may be applied toward such Termination Payment.

(e) Seller shall replenish the Delivery Term Security to the full required amount within thirty (30) days following a draw against the Delivery Term Security by Buyer.

9.5 Creditworthiness of Buyer and Seller. This Agreement is conditioned upon and subject to Buyer and Seller maintaining the financial creditworthiness required to perform their responsibilities according to the Agreement. In the event that Buyer ceases to have an investment grade credit rating, Buyer shall, within thirty (30) days thereafter, provide security in the form of a Letter of Credit or cash deposit in the amount of \$2,250,000. For the purposes hereof, "investment grade" shall mean a credit rating assigned to its senior long-term unsecured debt obligations of at least BBB- from Standard & Poor's Ratings Services or Baa3 from Moody's Investors Service.

ARTICLE X

FORCE MAJEURE

10.1 Force Majeure. Force Majeure is defined as an event or circumstance that is not reasonably foreseeable, is beyond the reasonable control of and not caused by the negligence or lack of due diligence of the Party claiming Force Majeure or that Party's contractors or suppliers, and adversely affects the performance by that Party of its obligations under or pursuant to this Agreement. Such events or circumstances may include, but are not limited to, actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, blockades, embargoes, sabotage, epidemics, explosions and fires not originating in the Facility or caused by its operation, hurricanes, floods, strikes, lockouts or other labor disputes or difficulties (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). However, the obligation to use reasonable diligence shall not be interpreted to require resolution of labor disputes by acceding to demands when such course is inadvisable in the discretion of the Party having such difficulty. Payment of money shall not be excused by Force Majeure.

10.2 Remedial Action. A Party shall not be liable to the other Party to the extent the first Party is prevented from performing its obligations due to an event of Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure shall take all reasonable actions necessary to remove such inability with all due speed and diligence. Such partially performing or nonperforming Party shall be prompt and diligent in attempting to remove the cause of its failure to perform. Neither Party shall be required to remedy, in

whole or in part, an event of Force Majeure if such remedy is inconsistent with Good Utility Practice. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. This Agreement may be terminated by the non-claiming Party upon ten (10) days prior written notice to the claiming Party with no further obligation to the Party impacted by Force Majeure if a Force Majeure event prevents the performance of a material portion of the obligations hereunder and such Force Majeure event is not resolved within six (6) months after the commencement of such Force Majeure event. In the event of such termination, neither Party shall have any further obligation to the other Party under this Agreement except such obligations which have already accrued at termination and/or survive the termination or expiration of this Agreement as provided in Section 15.20.

10.3 Exclusions from Definition of Force Majeure. Notwithstanding anything in the Agreement to the contrary, "Force Majeure" shall not mean:

(a) Inclement weather affecting construction, start-up, or operation of the Facility or related facilities that does not otherwise meet the definition of "Force Majeure;"

(b) Changes in market conditions or governmental action that affect Buyer or Seller, as applicable, the cost of Seller's supply of Net Energy from the Facility, or the ability of Buyer to obtain energy (and RECs and other related Environmental Attributes, as applicable) at a rate lower than the Net Energy Rate and/or other pricing provisions agreed upon by the Parties pursuant to this Agreement;

(c) Equipment breakdown or inability to use equipment caused by its design, construction, operation, maintenance or inability to meet regulatory standards, or otherwise caused by an event originating in the control of a Party;

(d) Unavailability of equipment, repairs or spare parts for the Facility, except to the extent due to a qualifying event of Force Majeure;

(e) Failure to obtain on a timely basis and maintain a necessary Permit or other regulatory approval or any undue delay in obtaining, maintaining, or renewing any Permit, in either case, due to Seller's failure to diligently pursue obtaining, maintaining or renewing such Permit; or

(f) Scheduled maintenance on the Distribution System or Transmission System.

10.4 Notice. In the event of any delay or nonperformance resulting from Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable after the occurrence of the Force Majeure event but in no event more than forty-eight (48) hours after the commencement of an event of Force Majeure, notify the other Party in writing of the nature, cause, date of commencement thereof, and the anticipated extent of any delay or interruption in performance.

ARTICLE XI

DEFAULT, TERMINATION, REMEDIES

11.1 Events of Default. Each of the following shall constitute an Event of Default:

(a) a Party fails to make when due, any payment required pursuant to this Agreement;

(b) Seller fails to timely satisfy the Completion Deadline (as such time period may be extended pursuant to Section 4.2);

(c) Seller fails to timely satisfy the Commercial Operation Date Deadline by the date that is 90 days after such Completion Deadline;

(d) any of the representations or warranties made by a Party in this Agreement is false or misleading in any material respect, and is not cured within the applicable Cure Period, or any Party fails to perform any of its covenants in this Agreement, and is not cured within the applicable Cure Period;

(e) a Party, or the entity that directly controls or owns a Party, ceases the conduct of active business; or if proceedings under the federal bankruptcy law or insolvency laws shall be instituted by or for or against a Party or the entity that directly controls or owns a Party; or if a receiver shall be appointed for a Party or any of the Party's assets or properties, or for the entity that directly controls or owns a Party; or if any part of a Party's assets shall be attached, levied upon, encumbered, pledged, seized or taken under any judicial process, and such proceedings shall not be vacated or fully stayed within sixty (60) calendar days thereof; or if a Party shall make an assignment for the benefit of creditors; or if a Party admits in writing its inability to pay its debts as they become due;

(f) a Party breaches any provision of the Agreement not specifically enumerated in this Section 11.1, and such breach is not cured within the applicable Cure Period; provided, however, there is no Cure Period for those breaches or Events of Default referenced in Section 11.1(i)(III) below;

(g) a Party fails to maintain in full force and effect any Permit necessary for such Party to perform its obligations under this Agreement;

(h) in the case of Seller, the Facility fails to deliver seventy percent (70%) of the Guaranteed Energy and REC Production (subject to any applicable adjustments to the Contract Quantity described in Section 3.5) in any two (2) consecutive Contract Years; or

(i) Except as otherwise provided herein, any defaulting Party shall have the following cure periods to accomplish the cure of any breach before it becomes an Event Default (the "Cure Period"):

(I) For breach of a monetary obligation: ten (10) days following delivery of written notice that a payment is due unless such payment is contested pursuant to Article XIV below; and

(II) For breach of a nonmonetary obligation (other than as provided in Section 11.1(i)(III) below): thirty (30) days following delivery of written notice of such breach; provided, that such defaulting Party shall have an additional period of time to cure such nonmonetary breach so long as the defaulting Party is making a good faith effort to cure the breach, the total cure period not to exceed sixty (60) days in the aggregate.

(III) Notwithstanding anything else herein to the contrary, there is no Cure Period for breaches of the provisions of Section 2.3, Article IV, or Section 5.1(e), or for the Events of Default referenced in Sections 11.1(b), (c), (e) or (h) above.

(j) Each Party agrees to accept the cure of a breach by a defaulting Party offered by a Financing Party who has provided financing to such defaulting Party; provided that the non-defaulting Party is under no obligation hereunder to notify the Financing Party of any breach or of its ability to cure such breach hereunder, and that a consent to assignment entered into between Buyer and such Financing Party pursuant to Section 15.1(b) may provide for a longer Cure Period if mutually agreed by Buyer and such Financing Party.

(k) An Event of Default shall not have occurred hereunder until the proper notice has been delivered and the applicable Cure Period has expired without the breach being cured.

11.2 Termination.

(a) In the event the defaulting Party fails to cure the Event of Default within the period for curative action, if any, under Section 11.1, the non-defaulting Party may terminate the Agreement by notifying the defaulting Party in writing (the "Termination Notice") of the decision to terminate and the effective date of the termination (the "Termination Date"). If the non-defaulting Party terminating this Agreement is entitled to a Termination Payment, it shall provide to the defaulting Party along with its Termination Notice, or as soon as practicable after providing the Termination Notice, its calculation in writing of the Termination Payment that it is owed hereunder. Such calculation shall be provided in writing to the defaulting Party by the non-defaulting Party with reasonable detail as to its determination.

(b) Termination of this Agreement shall not affect the accrued rights or obligations of either Party as of such termination. Buyer shall have the right to refuse delivery of any Net Energy and/or RECs and other Environmental Attributes that does not satisfy any warranties set forth in Section 3.2 or to claim actual damages incurred by Buyer for any such Net Energy and/or RECs and other Environmental Attributes accepted by Buyer without knowledge of its noncompliance. In addition, in the event that Seller shall not be in compliance with Section 5.1(e), Buyer shall have the right to refuse deliveries of Net Energy and/or RECs and other Environmental Attributes immediately without the passage of any applicable Cure Period or grace period.

(c) If a Default of a Party shall wholly or partly affect the performance (or the ability to perform) of the other Party under this Agreement, then any non-performance of the non-defaulting Party shall be excused to the extent affected by the Event of Default.

(d) Other rights to terminate (and the consequences thereof) in addition to those provided in this Article XI are provided in Sections 3.5, 5.3, 10.2, 15.14, and 15.19(c).

11.3 Buyer's Remedies upon Occurrence of a Seller Default and Termination prior to the Commercial Operation Date. In the event that Buyer terminates this Agreement due to an Event of Default by Seller occurring prior to the Commercial Operation Date, then Seller's remaining liability to Buyer (except for those obligations surviving termination as described in Section 15.20) shall be a Termination Payment equal to the sum of (i) all Extension Payments due and owing to Buyer by Seller, plus (ii) the liquidated damages owed pursuant to the end of Section 4.2, plus (iii) all Delay Damages due and owing to Buyer by Seller through the date of such termination, plus (iv) all reasonable costs and expenses (including the reasonable expenses and fees of Buyer's counsel) associated with the Event of Default, plus (v) all other amounts accrued and owing to Buyer from Seller hereunder.

11.4 Buyer's Remedies upon Occurrence of a Seller Default and Termination after the Commercial Operation Date. In the event that Buyer terminates this Agreement after the Commercial Operation Date due to an Event of Default by Seller, then Seller's liability to Buyer shall be an Early Termination Fee, plus, without duplication, all reasonable cost and expenses (including the reasonable expenses and fees of Buyer's counsel) associated with the Event of Default and with procuring alternative Net Energy and RECs and other related Environmental Attributes, as applicable, plus all other amounts accrued and owing to Buyer from Seller hereunder (e.g., overdue Delay Damages, Extension Payments, etc.). Upon termination of this Agreement by Buyer due to an Event of Default by Seller, the Parties shall have no future or further obligation to satisfy any other obligation under this Agreement, except for (i) payments or other obligations arising or accruing prior to the effective date of termination including those described in this Section 11.4, (ii) in the case of Buyer, its obligation to use commercially reasonable efforts to mitigate the Early Termination Fee, and (iii) those obligations surviving the termination or expiration of this Agreement pursuant to Section 15.20.

11.5 Seller's Remedies upon Occurrence of a Buyer Default and Termination. In the event that Seller terminates this Agreement due to an Event of Default by Buyer, then Buyer's liability to Seller shall be an Early Termination Fee, plus, without duplication, all reasonable cost and expenses (including the reasonable expenses and fees of Seller's counsel) associated with the Event of Default, plus all other amounts accrued and owing to Seller from Buyer hereunder. Upon termination of the Agreement by Seller due to an Event of Default by Buyer, the Parties shall have no future or further obligation to satisfy any other obligation under this Agreement, except for (i) payments or other obligations arising or accruing prior to the effective date of termination, (ii) in the case of Seller, its obligation to mitigate the Early Termination Fee, and (iii) those obligations surviving the termination or expiration of this Agreement pursuant to Section 15.20.

11.6 Acceptability of Liquidated Damages. Each Party agrees and acknowledges that (i) the damages that the Parties would incur due to an Event of Default would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Termination Payment as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

11.7 Payment of Termination Payment. The defaulting Party shall make the Termination Payment within fifteen (15) Business Days after the calculation of the Termination Payment is delivered to the defaulting Party by the non-defaulting Party. If the defaulting Party disputes the non-defaulting Party's calculation of the Termination Payment, in whole or in part, the defaulting Party shall, within five (5) Business Days of receipt of the non-defaulting Party's calculation of the Termination Payment, provide to the non-defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that the defaulting Party shall first transfer Performance Assurance to the non-defaulting Party in an amount equal to the Termination Payment as calculated by the non-defaulting Party. If the Parties are unable to resolve the dispute within thirty (30) days, Article XIV shall apply.

11.8 Use and Return of Performance Assurance. In the event that the defaulting Party fails to pay the Termination Payment in full within the time period set forth in Section 11.7, the non-defaulting Party may draw upon any Performance Assurance provided by the defaulting Party to satisfy the unpaid portion of the Termination Payment. Upon the payment of the Termination Payment in full, any undrawn Performance Assurance shall be promptly returned to the Party providing that Performance Assurance.

11.9 LIMITATION OF LIABILITY. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE RIGHTS OF THE NON-DEFAULTING PARTY AND THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN THIS AGREEMENT, AS THE SOLE AND EXCLUSIVE FULL, AGREED-UPON AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, AND ALL OTHER DAMAGES OR REMEDIES ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, OR IF A REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY NONEXCLUSIVE, THE NON-DEFAULTING PARTY SHALL HAVE THE RIGHT TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, PROVIDED, HOWEVER, THAT THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT, OR OTHERWISE EXCEPT WITH RESPECT TO CLAIMS FOR INDEMNIFICATION AGAINST THIRD PARTY CLAIMS UNDER ARTICLE XII BELOW.

ARTICLE XII

INDEMNIFICATION

12.1 General. Buyer and Seller shall each be responsible for its own facilities. Buyer and Seller shall each be responsible for ensuring adequate safeguards for other of Buyer's customers, Buyer's and Seller's personnel and equipment and for the protection of its own generating system. Each Party (the "Indemnifying Party") agrees, to the extent permitted by applicable law, to indemnify, pay, defend and hold harmless the other Party (the "Indemnified Party") and its officers, directors, employees, agents and contractors (hereinafter called respectively, "Seller Entities" and "Buyer Entities") from and against any and all claims, demands, costs or expenses for loss, damage, or injury to Persons or property of the Indemnified Party (or to third parties) directly caused by, arising out of, or resulting from:

(a) a breach by the Indemnifying Party of its covenants, representations and warranties or obligations under this Agreement;

(b) any act or omission by the Indemnifying Party or its contractors, agents, servants or employees in connection with the installation or operation of its generating system or the operation thereof in connection with the other Party's system;

(c) any defect in, failure of, or fault related to, the Indemnifying Party's generating system;

(d) the negligence or willful misconduct of the Indemnifying Party or its contractors, agents, servants or employees; or

(e) any other event or act that is the result of, or proximately caused by, the Indemnifying Party or its contractors, agents, servants or employees related to this Agreement or such Party's performance hereunder.

12.2 Claims Settlement. Payment by an Indemnified Party to a third party shall not be a Condition Precedent to the obligations of the Indemnifying Party under this Article XII. An Indemnified Party which becomes entitled to indemnification under this Article XII shall promptly notify the other Party of any claim or proceeding in respect of which it is to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice shall not excuse an indemnification obligation except to the extent failure to provide notice adversely affects the Indemnifying Party's interests in a material respect. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the expense of the Indemnifying Party. If the Indemnifying Party fails to assume the defense

of a claim, the indemnification of which is required under this Agreement, the Indemnified Party may, at the expense of the Indemnifying Party, contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only with the Indemnifying Party's consent (which shall not be unreasonably withheld or delayed), or absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. In the event that the Buyer is the indemnified party hereunder, it may draw upon any Performance Assurance to satisfy the unpaid portion of such indemnity claim. Article XII shall survive termination of this Agreement, as provided in Section 15.20.

ARTICLE XIII

REPRESENTATIONS, WARRANTIES, COVENANTS

13.1 **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that, as of the Effective Date:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or incorporation;

(b) it has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, company, partnership, governmental and/or other actions to authorize such execution and delivery and performance of such obligations;

(c) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any court or other agency of government applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets;

(d) there are no actions, suits, proceedings or investigations pending or, to the knowledge of the Party, threatened against it at law or in equity before any court or tribunal of the United States or any other jurisdiction that individually or in the aggregate could result in any materially adverse effect on the Party's business, properties, or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under this Agreement;

(e) except as provided in Sections 15.18 and 15.19, all authorizations of and exemptions, actions or approvals by, and all notices to or filings with, any governmental authority that are required to have been obtained or made by it at the time this representation is made with respect to this Agreement have been obtained or made and are in full force and effect, and all conditions of any such authorizations, exemptions, actions or approvals have been complied with;

(f) the Party has knowledge of all laws and business practices that must be followed in performing its obligations under this Agreement and the Party is in compliance with all

such laws and business practices except to the extent that failure to comply therewith would not, in the aggregate, have a material adverse effect on the other Party;

(g) this Agreement constitutes the Party's legal, valid and binding obligation, enforceable against it in accordance with its terms; and

(h) the Party covenants that, with the exception of (d) above, it will cause these representations and warranties to be true and correct throughout the Term of the Agreement.

13.2 Seller's Representations and Warranties.

(a) Seller represents and warrants to the Buyer that, as of the Effective Date of the Agreement, the Seller knows of no (i) existing violations of any environmental laws at the Facility, including those governing Hazardous Substances or (ii) pending, ongoing, or unresolved administrative or enforcement investigations, compliance orders, claims, demands, actions, or other litigation brought by a Government Agency(ies) or other third parties alleging violations of any environmental law or permit that would materially and adversely affect the operation of the Facility as contemplated by this Agreement.

(b) Seller represents and warrants to Buyer as of each Delivery Date that (i) the RECs Delivered hereunder are registered with the Tracking System; (ii) Seller has good and marketable title to the RECs, free and clear of any liens, Taxes, claims, security interests, or other encumbrances; (iii) Seller has not sold or otherwise transferred, and will not sell or otherwise transfer, the Environmental Attributes sold to Buyer under this Agreement to any other Person or entity or report the Environmental Attributes sold to Buyer under this Agreement for its own account; (iv) the RECs (consisting of the Environmental Attributes to the extent defined hereunder and the Product Reporting Rights) sold to Buyer under this Agreement will not be used or credited toward any other purpose, including, without limitation, another voluntary or mandatory program in any state, at the federal level, or otherwise; (v) it has not taken any action that would be considered to have claimed or retired the RECs or otherwise impaired or prejudiced the ability of the Buyer or its assignee to use the RECs to comply with any Applicable Program; and (v) the RECs Delivered hereunder were produced by the Facility and sold hereunder in tandem with the Net Energy associated with such RECs.

(c) Except as provided in Sections 15.1(b) and 15.1(d) below, Seller represents and warrants that the Facility is and will remain throughout the Term of the Agreement free and clear of all liens, claims, encumbrances and third party rights of any kind other than liens for taxes which are not yet due and payable and otherwise in accordance with Section 15.1(d) below.

13.3 No Implied Warranties. Except as expressly set forth in this Agreement, Seller makes no representations or warranties concerning Net Energy delivered under this agreement. Seller expressly disclaims any implied warranties of merchantability or fitness for a particular purpose.

ARTICLE XIV

DISPUTE RESOLUTION

14.1 **General.** It is the intent of the Parties that all breaches of this Agreement or disputes arising out of this Agreement shall be resolved in accordance with the dispute resolution procedure set forth in this Article XIV.

14.2 **Informal Resolution.** If any such breach or dispute arises between the Parties, then either Party may provide written notice thereof to the other Party, which shall include a detailed description of the subject matter of the dispute. Each Party shall promptly designate a senior executive who shall have authority to resolve the dispute through negotiations. The senior executives shall obtain such information as may be necessary to inform themselves of the substance and particulars of the dispute, provided that no document discovery or depositions shall be required during negotiation and any document exchange shall be voluntary. The negotiation and any documents exchanged in connection with the negotiation shall be confidential and considered statements made in compromise negotiations within the meaning of the Federal Rule of Evidence 408 and any applicable state law, evidentiary rules or doctrines. The senior executives shall meet within twenty (20) Business Days of the notice, at a time and place mutually acceptable to the senior executives.

14.3 **Binding Arbitration.** If the senior executives are unable to resolve the dispute within twenty (20) Business Days of their first meeting or such later date as the senior executives may mutually agree, then the dispute shall be resolved solely and exclusively by binding arbitration. The following arbitration procedures will be used absent agreement of the Parties to different procedures for a given arbitration:

(a) The dispute shall be finally settled by binding arbitration, before a single arbitrator, in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect, except as modified herein.

(b) The Party seeking relief from the other Party shall prepare and submit a request for arbitration (the "Demand"), which will include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief.

(c) Arbitration shall be held in Columbia, South Carolina. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 et seq.

(d) The arbitrator must be an individual with knowledge and experience in the electric industry, and shall be selected by the Parties or (failing their agreement on an arbitrator) by the AAA in accordance with Rule 11 of the AAA Commercial Arbitration Rules.

(e) The award shall be a reasoned opinion in writing and shall set forth findings of facts and conclusions of law. The award shall be final and binding upon the Parties. The arbitrator shall be authorized in its discretion to grant pre-award and post-award interest at

commercial rates. Judgment upon any award may be entered in any court having jurisdiction.

(f) This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

(g) Unless otherwise ordered by the arbitrator, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrator shall have no power to consider or award any form of damages barred by this Agreement.

(h) This Section shall not prevent either Party from seeking injunctive or other equitable relief as may be needed to prevent irreparable injury pending the award in any arbitration proceeding hereunder.

ARTICLE XV

MISCELLANEOUS

15.1 Assignment.

(a) Except as provided below, neither this Agreement nor the Facility may be assigned, directly or indirectly, in whole or in part by either Party without the prior written consent of the other Party; provided, however, that Buyer may pledge, encumber, or assign this Agreement, in whole or in part, to any Person (including any Affiliate of Buyer) without any restriction; provided, further, however, that any such assignment by Buyer (other than an assignment to its Affiliate or after which assignment Buyer remains liable hereunder) that gives Seller reasonable grounds for financial insecurity about the ability of Buyer's assignee or successor to perform the obligations of Buyer hereunder shall be subject to the approval of Seller, which shall not be unreasonably withheld.

(b) Notwithstanding anything else herein to the contrary, Seller may pledge, encumber, or assign the Facility (subject to the terms of Section 15.1(c) below), this Agreement or the revenues under this Agreement to any Financing Party as security for the applicable financing of the Facility and Seller shall provide prior written notice to Buyer of such pledge or assignment. To facilitate Seller's obtaining of financing to construct and operate the Facility, Buyer shall use commercially reasonable efforts to provide such consents to assignments, certifications, representations, information or other documents as may be reasonably requested by Seller or any Financing Party in connection with the financing of the Facility; provided that in responding to any such request, Buyer shall have no obligation to (a) provide any consent, certification, representation, information or other document, or enter into any agreement, that affects, or could reasonably be expected to have or result in a material effect on, any of Buyer's rights, benefits, risks and/or obligations under this Agreement which is adverse to Buyer or (b) incur any unreimbursed expense. Seller shall reimburse, or shall cause the Financing Parties to reimburse, Buyer for any and all incremental direct third party expenses (including the fees and expenses of counsel) incurred by Buyer in the preparation, negotiation, execution and/or delivery of any

documents requested by Seller or the Financing Parties, and provided by Buyer, pursuant to this Section 15.1(b).

(c) Buyer's consent, which shall not be unreasonably withheld, shall be required for any change in Control over Seller.

(d) Notwithstanding anything else herein to the contrary, Seller shall not, by way of security, charge or otherwise, encumber any interest it has in the Facility unless the secured party (for itself, its successors and assigns) agrees in a direct agreement between Buyer and such secured party, to, directly or through a designee, assume Seller's obligations under this Agreement in the event that such security interest in the Facility is executed upon, enforced or foreclosed upon (including, but not limited to, an assignment of the Facility in connection with the secured debt); provided, however, that any such assumption of this Agreement by a financing party or its designee shall impose liability under this Agreement on the secured party or its designee only with respect to acts or circumstances arising on or after the date of such execution, enforcement, foreclosure, or assignment, but shall not waive amounts owed by debtor to Buyer.

(e) Any purported assignment, pledge, or transfer of this Agreement or the Facility not in compliance with the provisions of this Section 15.1 shall be null and void.

15.2 **Notices.** Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to Seller: Shaw Creek Solar, LLC
Attn: Tim Daniels
20 Towne Dr, Suite 388
Bluffton, SC 29910

If to Buyer: South Carolina Electric & Gas Company
220 Operation Way, Mail Code P-26
Cayce, SC 29033
ATTN: Director, Power Marketing

With a copy to: South Carolina Electric & Gas Company
220 Operation Way, Mail Code P-26
Cayce, SC 29033
ATTN: Power Marketing Manager

South Carolina Electric & Gas Company
220 Operation Way, Mail Code D-308
Cayce, SC 29033
ATTN: General Counsel

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication

shall be deemed delivered on receipt if delivered by hand, the next Business Day after deposit by the sending Party if delivered by overnight courier, and on the third Business Day after deposit by the sending Party if delivered by U.S. mail.

15.3 **No Third-Party Beneficiary.** No provision of the Agreement is intended to, nor shall it in any way inure to the benefit of, any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any Person not a Party hereto.

15.4 **No Dedication.** No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect the status of Buyer as a body public and corporate or Seller as an independent individual or entity and not a public utility.

15.5 **Integration: Amendment.** The Agreement, together with all Attachments, constitutes the entire agreement between the Parties relating to the transaction described herein and supersedes any and all prior oral or written understandings. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

15.6 **Governing Law.** The Agreement is made in the State of South Carolina and shall be interpreted and governed by the laws of the State of South Carolina and/or the laws of the United States, as applicable, without reference to its conflict of laws provisions.

15.7 **Relationship of Parties.**

(a) The duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and Buyer shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

(b) The relationship between Buyer and Seller shall be that of contracting party to independent contractor. Accordingly, subject to the specific terms of the Agreement, Buyer shall have no general right to prescribe the means by which Seller shall meet its obligations under the Agreement.

(c) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform Seller's obligations under the Agreement, including all federal, state, and local income, social security, payroll, and employment taxes, and statutorily mandated workers' compensation coverage. None of the persons employed

by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee, or agent.

15.8 Good Faith and Fair Dealing. The Parties agree to act in accordance with the principles of good faith and fair dealing in the performance of the Agreement.

15.9 Severability. Should any provision of the Agreement be or become void, illegal, or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in force. The Parties will, however, use their reasonable efforts to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and the Agreement as a whole.

15.10 Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under the Agreement.

15.11 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Seller and Buyer are "forward contract merchants" within the meaning of the United States Bankruptcy Code.

15.12 OSHA Construction Safety and Health Training. Seller shall comply with all applicable OSHA Rules. Seller shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for its onsite employees, which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program, unless such employees have previously completed the required program. All employees are required to complete the program within sixty (60) days of beginning work on such construction project. An employee found on a work site without documentation of the successful completion of the required training shall be afforded twenty (20) days to produce such documentation before being subject to removal from the project.

15.13 Assent Not Waiver of Future Breach. No assent, express or implied, by either Party to any breach of the Agreement by the other Party shall be deemed to be a waiver of any subsequent breach.

15.14 Damage to Facility. In the event that the Facility is destroyed or substantially damaged by fire, ice, snow, lightning, wind, explosion, aircraft or other vehicular damage, collapse or other casualty, Seller shall repair or reconstruct the Facility as soon as reasonably possible. If it is reasonably determined by a professional engineer in the solar industry engaged by the Seller that the Facility cannot be repaired or reconstructed in a commercially reasonable manner with repair or construction activities beginning within one hundred and twenty (120) days and the Facility returned to operation within three-hundred and sixty-five (365) days from date of the casualty event, then (i) Seller shall so notify Buyer within sixty (60) days after the casualty event, (ii) such notice shall include all reports and documentation provided by the professional engineer in the solar industry engaged by Seller

concerning the ability to repair or reconstruct the Facility, and (iii) either Party may terminate this Agreement by providing ten (10) days written notice to the other Party. Upon such termination, neither Buyer nor Seller shall have any further obligation to the other Party under this Agreement except such obligations which have already accrued at termination, and those obligations surviving the termination or expiration of this Agreement as described in Section 15.20.

15.15 Confidentiality. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the Facility or of its business ("Confidential Information") to the other, and identifies the same in writing to the receiving Party as provided below, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the Facility. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "Representatives"), and affiliates, lenders, and potential assignees of this Agreement, if any. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 15.15, except as set forth in Sections 15.16 and 15.17 and for purposes of Sections 15.18 and 15.19. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party (except that the receiving Party may keep a copy of the same as required by law). Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 15.15 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 15.15. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 15.15, but shall be in addition to all other remedies available at law or in equity. The terms of this Section 15.15 shall control over the provisions of any previous Confidentiality Agreement executed by and between the Parties with regard to the subject matter hereof.

15.16 Permitted Disclosures. Notwithstanding any other provision in this Agreement to the contrary, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the unlawful acts by receiving Party, (ii) is required to be disclosed to a Governmental Agency under applicable law or pursuant to a validly issued subpoena, (iii) is independently developed by the receiving Party or (iv)

becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Agency, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law. In addition, notwithstanding anything else herein to the contrary, nothing herein shall prohibit Buyer from disclosing any information (whether or not Confidential Information) to any Federal and state regulators.

15.17 Goodwill and Publicity. Except as otherwise provided herein, neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making prepared public announcements related to the execution and existence of this Agreement, and the construction and operation of the Facility, and each Party shall have the right to promptly review and comment upon, and approve (which shall not be unreasonably denied or delayed) any publicity materials by the other Party that refer to, or that describe any aspect of, this Agreement or the Facility. Neither Party shall make any press release or prepared public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party which shall be in the discretion of such Party. Without limiting the generality of the foregoing, all prepared public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and related Product Reporting Rights.

15.18 Filing Agreement with the South Carolina Public Service Commission ("SCPSC"). This Agreement is required to be filed by Buyer with the SCPSC within ten (10) days of its execution. Buyer shall use commercially reasonable efforts to satisfy such filing requirement and shall provide Seller with written notice promptly following the satisfaction of such filing requirement.

15.19 Review by SCPSC. This Agreement is subject to review by the SCPSC upon complaint by either Party, or pursuant to its own motion, and the terms herein may be modified in whole or in part or declared null and void by the SCPSC.

(a) **Provision of Information to the SCPSC.** Buyer reserves right to provide to the SCPSC, upon request, information pertaining to this Agreement including, but not limited to records of the Facility's generation output and Buyer's purchases thereof, including copies of monthly statements of power purchases and data from meters and telemetering equipment installed at the Facility. Buyer will advise Seller of the furnishing of any information.

(b) **Cooperation with the SCPSC.** Buyer and Seller agree to work together in good faith to support the filing of this Agreement with the SCPSC, including providing response to any information requests, data requests, and/or requests for interviews, and participation in any investigation, hearing, and/or appeal, as applicable.

(c) Termination. In the event that the SCPSC issues an order or other such regulatory directive with modification, suspension, investigation or other condition that has a material adverse effect on either Party, then the Parties agree to negotiate in good faith for a period of thirty (30) days an amendment to this Agreement that complies with such SCPSC order or directive. If the Parties cannot reach an agreement, either Party may terminate this Agreement upon ten (10) days prior written notice to the other Party and neither Party shall have any obligation, duty or liability to the other arising hereunder under any claim or theory whatsoever except as to costs and balances, any other obligations incurred or accrued prior to the effective date of such termination, and those obligations surviving termination or expiration of this Agreement as described in Section 15.20.

15.20 Survival. The termination of this Agreement shall not discharge any Party from any obligation it owes to the other Party hereunder by reason of any transaction, cost, loss, damage, expense or liability which shall occur or arise (or the circumstances, events or bases which shall occur or arise) prior to such termination. It is the intent of the Parties hereby that any obligation owed (whether the same shall be known or unknown at the termination of this Agreement or whether the circumstances, events or bases of the same shall be known or unknown at the termination of this Agreement), including, but not limited to, an indemnification obligation arising under Section 12.1 from circumstances occurring prior to termination but not known at termination, will survive the termination of this Agreement. In addition, the provisions within Articles XI, XII, XIV, and XV (and any provisions or definitions referenced therein necessary to the administration of such Articles) shall survive the termination of this Agreement. In addition, for twenty-four (24) months after the expiration or termination of this Agreement, all audit rights of Buyer herein shall survive such termination and expiration of this Agreement. Seller shall retain any and all documents (including, without limitation, paper, written, and electronic) and/or any other records relating to this Agreement and the Facility for a period of twenty-four (24) months after the termination or expiration of this Agreement.

15.21 Limitation of Duty to Buy. If this Agreement is terminated due to a default by Seller, neither Seller nor any Affiliate and/or successor of Seller, nor any Affiliate and/or successor of Seller to the Facility, including, without limitation, ownership and/or operation of the Facility will require or seek to require Buyer to purchase any output (Energy or otherwise) from the Facility under any applicable law (including without limitation PURPA) or otherwise at a price higher than the Net Energy Rate set forth in Attachment B and/or a price higher than any price agreed upon by the Parties for RECs and other Environmental Attributes for any period that would have been covered by the Term of this Agreement had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other Person on whose behalf it may act, and on behalf of any successor to Seller or successor to the Facility, hereby agrees to the terms and conditions in the above sentence, and hereby waives any right it may have to dispute the above sentence.

15.22 Change in Law.

(1) Regulatory Event. A "Regulatory Event" means one or more of the following events:

- (i) **Illegality.** After the Effective Date, due to the adoption of, or change in, any applicable law or in the interpretation thereof by any Government Agency with competent jurisdiction, it becomes unlawful for a Party to perform any material obligation under this Agreement.
- (ii) **Adverse Government Action.** After the Effective Date, there occurs any adverse material change in any applicable law (including material change regarding a Party's obligation to sell, deliver, purchase, or receive the Net Energy and/or Environmental Attributes, as applicable) and any such occurrence renders illegal or unenforceable any material performance or requirement under this Agreement.

(2) **Process.** Upon the occurrence of a Regulatory Event the Party affected by the Regulatory Event may notify the other Party in writing of the occurrence of a Regulatory Event, together with details and explanation supporting the occurrence of a Regulatory Event. Upon receipt of such notice, the Parties agree to undertake, during the thirty (30) days immediately following receipt of the notice, to negotiate such modifications to reform this Agreement to remedy the Regulatory Event and attempt to give effect to the original intention of the Parties. Upon the expiration of the 30-day period, if the Parties are unable to agree upon modifications to the Agreement that are acceptable to each Party, in each Party's sole discretion, then either Party will have the right, in such Party's sole discretion, to terminate this Agreement with a 30-day advance written notice; provided, however, that in the case of a Regulatory Event relating solely to RECs or other Environmental Attributes, if applicable, a Party's right to terminate this Agreement pursuant to this Section 15.22 shall extend only to those portions of the Agreement relating to RECs or other Environmental Attributes, if applicable, and the remainder of the Agreement will remain in full force and effect.

15.23 **Mobile-Sierra.** Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of this Agreement proposed by a Party, a non-party or the FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

[Signature Page Follows]

CONFIDENTIAL

EXECUTION VERSION

IN WITNESS WHEREOF, the Parties have caused the Agreement to be duly executed as of the day and year first above written.

Seller:

SHAW CREEK SOLAR, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

Buyer:

South Carolina Electric & Gas Company,
a South Carolina corporation

By: _____

Name: Daniel F. Kassis

Title: Vice President, Customer Relations & Renewables



CONFIDENTIAL

EXECUTION VERSION

ATTACHMENT A – Description of Facility

ATTACHMENT B - Schedule of Rates

ATTACHMENT C - Net Energy and REC Delivery Requirements

ATTACHMENT D – Insurance Requirements

ATTACHMENT A

Description of Facility

1. Site

Approximately 953 acres of land located near Eureka, Aiken County, South Carolina. The GPS coordinates of the site are (33.670263, -81.754332).

2. Equipment

(i) Solar Power Plant Design: The plant will include approximately 108 MWdc of solar PV modules. The facility will utilize 28 1500v inverters. The inverters will be permanently power limited to 2.675 MW by the manufacturer. Each inverter will be paired with a medium-voltage transformer. The 34.5 kV collection system will be primarily underground and will feed into a single 34.5-230 kV transformer owned by Shaw Creek Solar that will be located onsite. The high-voltage transformer will be connected to the SCE&G owned 230 kV switching station with a 230 kV tie line. The tie line will be approximately 100' in length. The SCE&G switching station will be located adjacent to the SCE&G Ward-Graniteville 230 kV transmission line on a 5-acre parcel that will be owned by Shaw Creek Solar LLC, or an affiliate thereof, and leased to SCE&G.

(ii) Technology: The project will utilize TMEIC 1500V 2.675 MW inverters, JA Solar 355w modules, and NEXTracker single-axis trackers. The use of these technologies is subject to the equipment's availability and pricing at the time of project financing.

(iii) Solar Power Plant Size (Nameplate Capacity): 74.9 MW-AC

(iv) Estimated Yr-1 Production: Approximately 186,500 MWh

(v) Module: JA Solar 355w Module

(vi) Inverter: TMEIC 1500v 2.675 MW (at 35 degrees Celsius)

(vii) Racking: NEXTracker single-axis trackers

(viii) Monitoring/Data Logging: The project will utilize real-time monitoring equipment and will be tied into a forecasting service

(ix) Operating Voltage(kV): 230 kV

(x) Project Controls: The design of the control scheme has not been completed.

3. Interconnection

230 kV tap

4. **Facility Security**

The facility will be fully enclosed with 6' metal fencing with 1' of barbed wire, or a comparable fence design

5. **Metering**

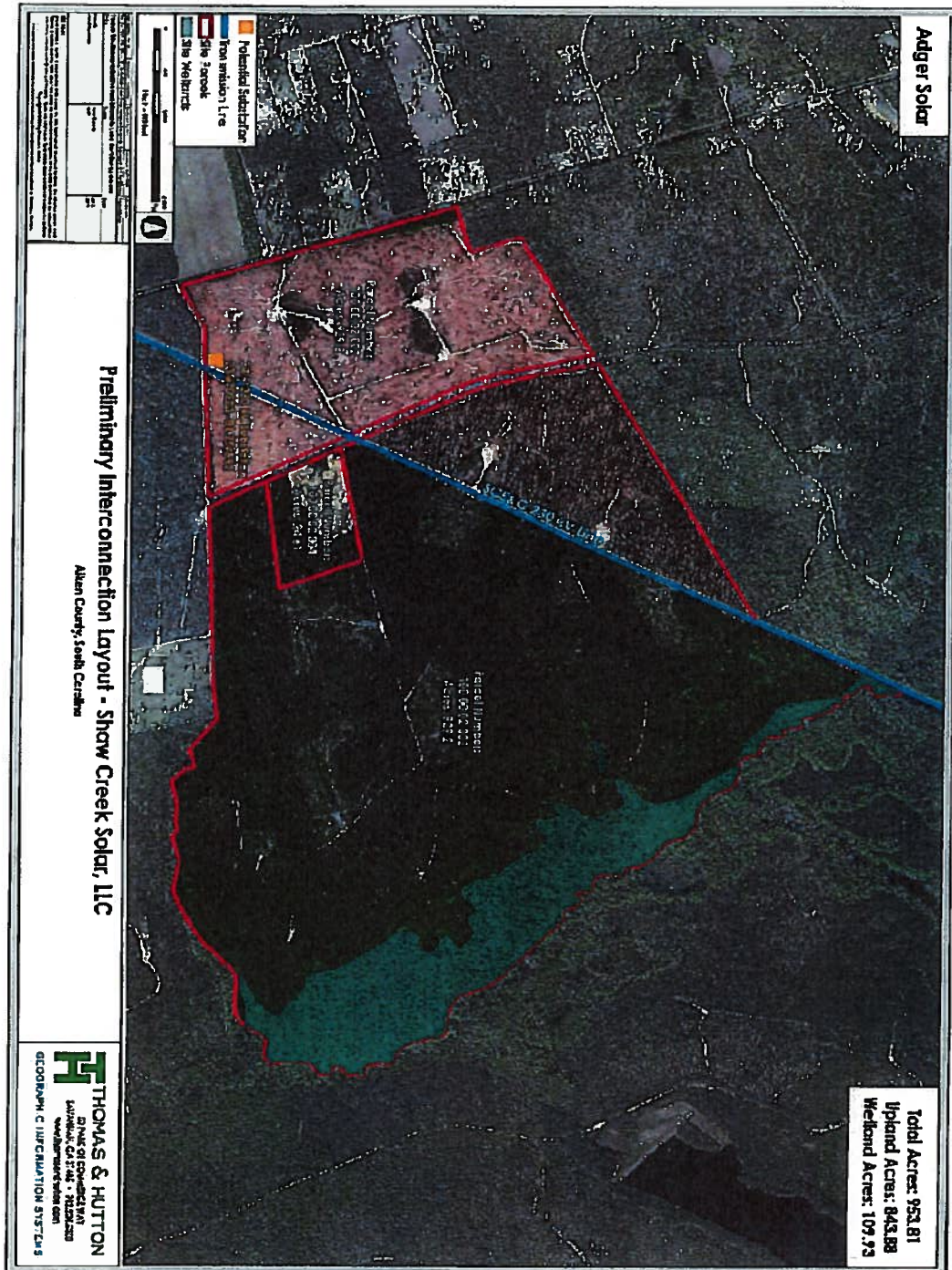
A revenue meter will be installed by SCE&G at the Delivery Point adjacent to the new SCE&G switching station to be constructed to accommodate the interconnection of the Project and will be located at the following GPS coordinates (33.670263, -81.754332), adjacent to the existing SCE&G high voltage transmission right of way.

6. Scaled map and drawing of Facility to be provided by Seller pursuant to Section 2.1 (See Exhibit A and Single-Line Drawings).

CONFIDENTIAL

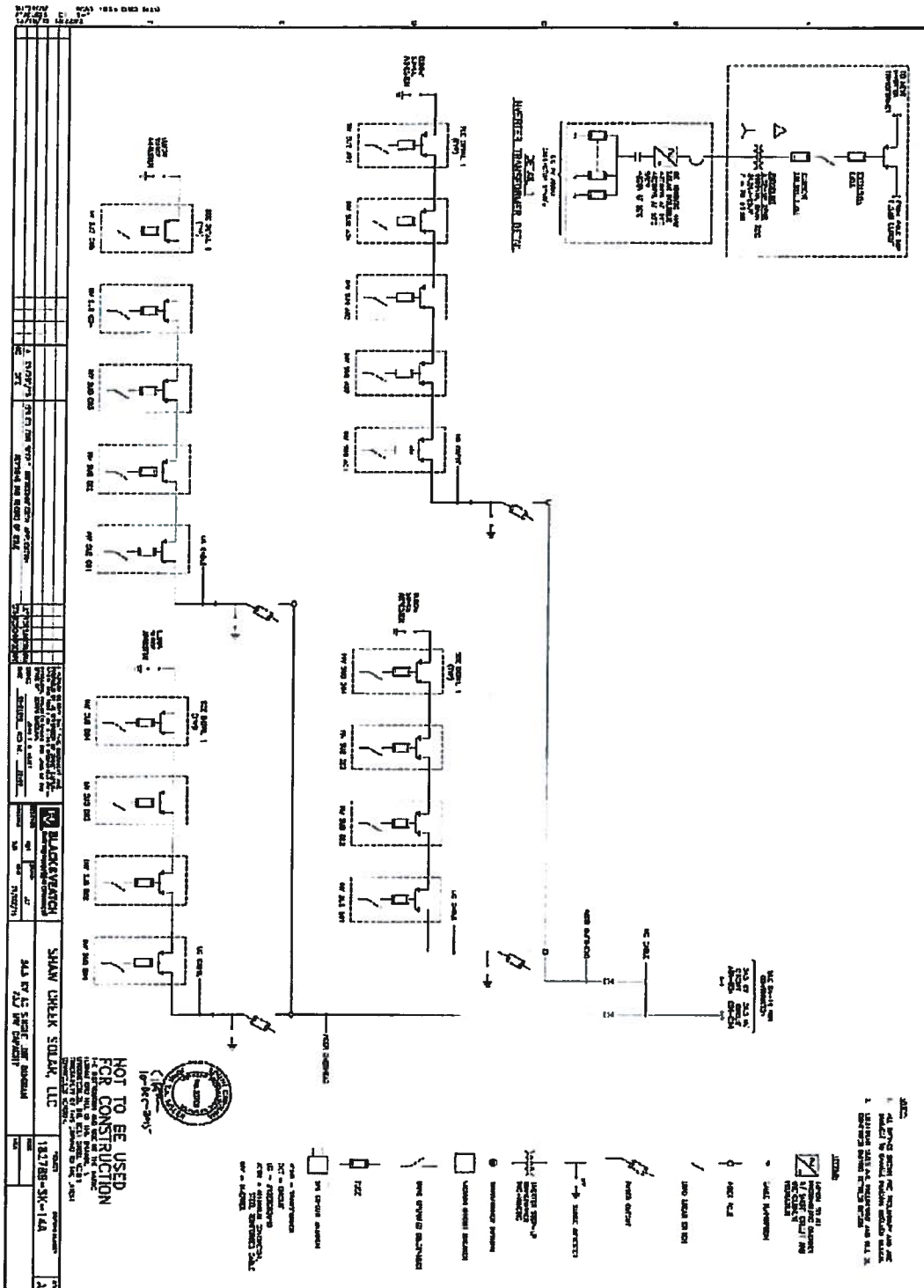
EXECUTION VERSION

Exhibit A



CONFIDENTIAL

EXECUTION VERSION



ATTACHMENT B

Schedule of Rates

Net Energy Rate

Beginning on the Commercial Operation Date Buyer shall pay Seller the following rates per kWh ("Net Energy Rate") for Net Energy delivered by the Seller to Buyer at the Delivery Point. For each applicable hour, the Net Energy Rate is comprised of the applicable Energy Rate below plus the applicable Capacity Rate below. These rates shall be applied to the hourly integrated values for Net Energy delivered, rounded to the nearest whole kWh.

Energy Rate (per kWh):

For Energy Delivered During the Following Calendar Years	Summer Months On-Peak Hours \$/kWh	Summer Months Off-Peak Hours \$/kWh	Winter Months On-Peak Hours \$/kWh	Winter Months Off-Peak Hours \$/kWh
2018 - 2020	0.03385	0.02757	0.03189	0.03162
2021 - 2025	0.03316	0.02682	0.03178	0.02815
2026 & Beyond	0.03861	0.03042	0.03913	0.03294

Determination of On-Peak and Off-Peak Hours

1. On-Peak Hours during the summer months of June through September are defined as the hours between 10:00 a.m. and 10:00 p.m., Monday through Friday.
2. On-Peak Hours during the winter months of November through April are defined as the hours between 6:00 a.m. and 1:00 p.m. and 5:00 p.m. through 10:00 p.m., Monday through Friday.
3. On-Peak Hours during the winter months of October and May are defined as the hours between 10:00 a.m. and 10:00 p.m., Monday through Friday.
4. Off-Peak Hours in any month are defined as all hours not specified as on-peak hours.

CONFIDENTIAL

EXECUTION VERSION

Capacity Rate (per kWh):

For Net Energy delivered to SCE&G's system during Critical Peak Hours only:

Summer Months (June – August)	Winter Months (December – February)
<u>\$/kWh</u>	<u>\$/kWh</u>
\$0.06466	\$0.02190

Determination of Critical Peak Hours:

For the Summer Months of June - August:

The Critical Peak Hours are defined as the hours between 2:00 p.m. - 6:00 p.m., Monday - Friday.

For the Winter Months of December - February:

The Critical Peak Hours are defined as the hours between 6:00 a.m. - 9:00 a.m., Monday - Friday.

The Net Energy Rate per kWh contained herein will be effective until the end of the Term of this Agreement.

Test Energy Rate

Prior to the Commercial Operation Date, Buyer shall pay Seller the following rates per kWh ("Test Energy Rate") for Test Energy delivered by the Seller to Buyer at the Delivery Point. These rates shall be applied to the hourly integrated values for Net Energy delivered, rounded to the nearest whole kWh.

Test Energy Rate (per kWh):

For Energy Delivered During the Following Calendar Years	Summer Months On-Peak Hours \$/kWh	Summer Months Off-Peak Hours \$/kWh	Winter Months On-Peak Hours \$/kWh	Winter Months Off-Peak Hours \$/kWh
2018 - 2020	0.03385	0.02757	0.03189	0.03162

Determination of On-Peak and Off-Peak Hours

1. On-Peak Hours during the summer months of June through September are defined as the hours between 10:00 a.m. and 10:00 p.m., Monday through Friday.

2. On-Peak Hours during the winter months of November through April are defined as the hours between 6:00 a.m. and 1:00 p.m. and 5:00 p.m. through 10:00 p.m., Monday through Friday.
3. On-Peak Hours during the winter months of October and May are defined as the hours between 10:00 a.m. and 10:00 p.m., Monday through Friday.
4. Off-Peak Hours in any month are defined as all hours not specified as on-peak hours.

Seller Charge:

Seller shall pay the following Seller Charge each monthly billing period: \$45.00

CONFIDENTIAL

EXECUTION VERSION

ATTACHMENT C

Net Energy and REC Delivery Requirements

Contract Year	<u>Contract Quantity</u>	
	Net Energy (MWh)	RECs
1*	<u>TBD</u>	0
2	185,568	0
3	184,640	0
4	183,716	0
5	182,798	0
6	181,884	0
7	180,974	0
8	180,070	0
9	179,169	0
10	178,273	0
11	177,382	0
12	176,495	0
13	175,613	0
14	174,735	0
15	173,861	0
16	172,992	0
17	172,127	0
18	171,266	0
19	170,410	0
20	169,558	0
21*	<u>TBD</u>	0

* The quantities for Contract Year 1 and Contract Year 21 are pro-rated as required, pursuant to Section 3.5, to reflect a partial Calendar Year.

ATTACHMENT D

Insurance Requirements

1. **Policy Type.** The Seller will procure or cause to be procured and will maintain throughout the entire Term of this Agreement, a policy or policies of liability insurance issued by an insurer acceptable to Buyer on a standard "Insurance Services Office" commercial general liability form (such policy or policies, collectively, the "Seller's Insurance"). A certificate of insurance shall be delivered to Buyer at least fifteen (15) calendar days prior to the start of any work at the Facility. At a minimum, Seller's Insurance shall contain (a) an endorsement providing coverage, including products liability/completed operations coverage for the Term of this Agreement, and (b) a broad form contractual liability endorsement covering liabilities (i) that might arise under this Agreement or (ii) caused by operation of the Facility or any of Seller's equipment in satisfactory and safe operating condition. Without limiting the foregoing, Seller's Insurance must be reasonably acceptable to Buyer. Any premium assessment or deductible shall be for the account of Seller and not Buyer.
2. **Policy Minimum Limits.** Seller's General Liability Insurance shall have a minimum limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, combined single limit, for bodily injury (including death) or property damage.
3. **Policy Effective Date.** To the extent that Seller's Insurance is on a "claims made" basis, the retroactive date of the policy(ies) shall be the Effective Date of this Agreement or such other date as may be agreed upon to protect the interests of Seller and Buyer. Furthermore, to the extent that Seller's Insurance is on a "claims made" basis, the Seller's duty to provide insurance coverage shall survive the termination of this Agreement until the expiration of the maximum statutory period of limitations in the State of South Carolina for actions based in contract or in tort. To the extent the Seller's Insurance is on an "occurrence" basis, such insurance shall be maintained in effect at all times by the Seller during the Term of this Agreement.
4. Seller must maintain Workers' Compensation insurance regardless of statutory requirements as outlined below:
 - (a) Workers' Compensation – Statutory Limits
 - (b) Employer's Liability - \$1,000,000
 - (c) "All-States" endorsement required
5. The Seller must provide Environmental Impairment insurance with minimum limits of \$1,000,000 per occurrence.
6. **Policy Cancellation or Alteration.** Seller's Insurance shall provide that it may not be cancelled or materially altered without prior written notice per the policy terms and

conditions to Buyer. The Seller shall provide Buyer with a copy of any material communication or notice related to the Seller's Insurance within ten (10) Business Days of the Seller's receipt or issuance thereof.

7. Additional Insured. Except for Workers' Compensation coverage, the Seller shall be designated as the named insured and "SCANA Corporation and its subsidiaries" shall be designated as an additional insured on all of Seller's insurance policies. The Seller's insurance policies shall be endorsed to be primary and non-contributory to any coverage maintained by Buyer.

8. All insurance shall be with sound insurance companies which have an AM Best rating of A-VII as the minimum and are authorized to do business in the state where the work is performed.

9. Neither a failure of the Seller to provide the required certificate of insurance nor Seller's submission of a certificate of insurance not in conformance with the insurance requirements stated herein shall relieve the Seller from the obligation to have in force the required insurance coverages.

10. None of Seller's insurance policies shall have any "other insurance" clause or language which would jeopardize the primacy of Seller's insurance with respect to Buyer's self-insured retention or excess insurance policies.

11. None of Seller's personnel shall be deemed for any purpose to be solely or dually employed by the Buyer. If any employee of the Seller shall recover benefits under Buyer's Workers' Compensation as a result of injury or disease sustained in, or Unemployment Insurance coverage resulting from, performing work under the Contract while on Seller's payroll, Seller shall reimburse Buyer for the full amount of such benefits and any cost or expenses incurred by Buyer related thereto.

12. Buyer shall accept, in connection with the Contract, the provisions of all the workers' compensation laws of the state in which the work is performed and any re-enactments and supplements thereto. In addition, Buyer shall maintain workers' compensation coverage for all Buyer's employees performing the work, regardless of whether required to do so by state law.